

EXHIBIT 6

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<p>1 EXHIBIT 7 McGraw-Hill Electronics Dictionary Sixth Edition 40</p> <p>2 EXHIBIT 8 Case 6:13-cv-00881-JDL 42</p> <p>3 Document 94-2 Filed 10/20/14</p> <p>4 Page 1 of 26 Page ID #: 1949 - 1974</p> <p>5 October 24, 2014 Baxter Declaration and exhibits</p> <p>6 EXHIBIT 9 Ethernet connector schematics 48</p> <p>7 EXHIBIT 10 A copy a diagram labeled 61</p> <p>8 Figure 10</p> <p>9 EXHIBIT 11 A copy of a diagram labeled 90</p> <p>10 Figure 8</p> <p>11 EXHIBIT 12 A copy of a diagram labeled 93</p> <p>12 Figure 18</p> <p>13 REQUESTED DOCUMENTS/INFORMATION</p> <p>14 NO. DESCRIPTION PAGE</p> <p>15 None</p> <p>16 CERTIFIED QUESTIONS/INSTRUCTIONS NOT TO ANSWER</p> <p>17 NO. PAGE/LINE</p> <p>18 None</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 VIDEOGRAPHER: We are on the record.</p> <p>2 Today's date is January 20th, 2016. It is 9:11 a.m.</p> <p>3 This is the video recorded deposition of</p> <p>4 Les Baxter. My name is Michael Ince, here with our</p> <p>5 court reporter Joe Hendrick. We are here on assignment</p> <p>6 from Veritext Legal Solutions at the request of counsel</p> <p>7 for the defendant -- I'm sorry. At the request of</p> <p>8 counsel for the plaintiff.</p> <p>9 MR. BLUESTONE: Defendant.</p> <p>10 VIDEOGRAPHER: Thank you. At the request</p> <p>11 of the counsel for the defendant.</p> <p>12 This deposition is being held at Thompson &</p> <p>13 Knight in Dallas, Texas.</p> <p>14 The caption of the lead case is Chrimar</p> <p>15 Systems et al. versus Alcatel-Lucent et al. This case</p> <p>16 is being taken in the United States District Court for</p> <p>17 the Eastern District of Texas, Tyler division, Case</p> <p>18 Number 6:15-CV-163-JDL.</p> <p>19 Would counsel please state their</p> <p>20 appearances for the record.</p> <p>21 MR. BLUESTONE: David Bluestone, McDermott</p> <p>22 Will & Emery, for AMX.</p> <p>23 MS. PESCHEL: Leisa Peschel, Williams</p> <p>24 Morgan, P.C., for defendants ALE USA, Inc.,</p> <p>25 Alcatel-Lucent, USA, Inc., and Alcatel-Lucent Holdings,</p>

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<p style="text-align: right;">Page 6</p> <p>1 Inc.</p> <p>2 MR. CRAVEY: Chris Cravey from Williams</p> <p>3 Morgan, P.C., also on behalf of the same defendants.</p> <p>4 MR. COHEN: Justin Cohen of Thompson &</p> <p>5 Knight for the plaintiffs.</p> <p>6 MR. MEHTA: Shivan Mehta for the</p> <p>7 plaintiffs.</p> <p>8 THE REPORTER: Raise your right hand,</p> <p>9 please, sir.</p> <p>10 Do you swear or affirm that the testimony</p> <p>11 you are about to give in this case will be the truth,</p> <p>12 the whole truth, and nothing but the truth?</p> <p>13 THE WITNESS: Yes, I do.</p> <p>14 LES BAXTER</p> <p>15 having been duly sworn, testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. BLUESTONE:</p> <p>18 Q. Good morning, Mr. Baxter.</p> <p>19 A. Good morning.</p> <p>20 Q. I notice you have a document in front of</p> <p>21 you. Is that a copy of your declaration?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Okay. Is it a clean copy, or does it have</p> <p>24 any markups?</p> <p>25 A. It's clean.</p>	<p style="text-align: right;">Page 8</p> <p>1 larger.</p> <p>2 A. All right.</p> <p>3 Q. On page 1, there is Claim 1 of the '760</p> <p>4 patent.</p> <p>5 Page 2 is Claim 73 of the '760 patent.</p> <p>6 Page 3 is Claim 1 of the '107 patent.</p> <p>7 Page 4 is Claim 104 of the '107 patent.</p> <p>8 Page 5 is Claim 1 of the '838 patent.</p> <p>9 And page 6 is Claim 31 of the '012 patent.</p> <p>10 Again, you can choose to use them if it's</p> <p>11 helpful.</p> <p>12 A. Okay.</p> <p>13 Q. Your preference is fine.</p> <p>14 A. Okay. Thank you.</p> <p>15 Q. You're welcome.</p> <p>16 Could you please state your name.</p> <p>17 A. Les Baxter.</p> <p>18 Q. And sitting here today, Mr. Baxter, is</p> <p>19 there anything preventing you from giving complete</p> <p>20 testimony?</p> <p>21 A. No.</p> <p>22 Q. You've had a good night's sleep?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. No medications that you would have that</p> <p>25 would have affected your memory?</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Pardon me?</p> <p>2 A. It's clean.</p> <p>3 Q. I don't need to see it.</p> <p>4 A. Just got it this morning.</p> <p>5 Q. Okay. I'm going to just do a little</p> <p>6 housekeeping and mark six exhibits for you.</p> <p>7 A. Okay.</p> <p>8 (Marked Deposition Exs. 1-6)</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. Exhibit 1 is going to be a copy of your</p> <p>11 declaration, which, presumably, is the same thing you</p> <p>12 have in front of you.</p> <p>13 A. Okay.</p> <p>14 Q. Here is Exhibit 1.</p> <p>15 It's a copy of your declaration dated</p> <p>16 December 17th, 2015.</p> <p>17 Exhibit 2 is going to be a copy of U.S.</p> <p>18 Patent number 8,902,760.</p> <p>19 Exhibit 3 is 8,942,107.</p> <p>20 Exhibit 4 is U.S. patent number 9,019,838.</p> <p>21 Exhibit 5 is U.S. patent number 8,155,012.</p> <p>22 And then for your convenience -- you can</p> <p>23 choose to use it; you can choose not to use it -- I put</p> <p>24 as Exhibit 6, a copy of the claims as they are printed</p> <p>25 out in the patents, just blew them up so they are a bit</p>	<p style="text-align: right;">Page 9</p> <p>1 A. No.</p> <p>2 Q. Sorry. Have you to answer verbally for the</p> <p>3 court reporter.</p> <p>4 A. Oh, okay. I see the camera and I'm</p> <p>5 thinking -- you know. No. I don't.</p> <p>6 Q. Okay. Thank you.</p> <p>7 If I ask you anything that's unclear,</p> <p>8 please ask for clarification; otherwise, the record</p> <p>9 will reflect that you understood the question. Is that</p> <p>10 fair?</p> <p>11 A. Yes.</p> <p>12 Q. Thank you, sir.</p> <p>13 How many times have you been deposed</p> <p>14 before?</p> <p>15 A. Six or eight probably.</p> <p>16 Q. Okay. And how many times on behalf of</p> <p>17 Chrimar?</p> <p>18 A. I believe two.</p> <p>19 Q. Okay. And one of those instances, I took</p> <p>20 your deposition; correct?</p> <p>21 A. That is correct.</p> <p>22 Q. And that deposition pertained to the '012</p> <p>23 patent that is presented in front of you today;</p> <p>24 correct?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. Okay. Sitting here today, is there any 2 aspects of that prior testimony that you believe would 3 need to be corrected or modified? 4 MR. COHEN: Objection. Outside the scope 5 of the deposition. 6 A. I -- I don't believe so. I mean, that's a 7 separate case which is settled, and I don't think any 8 of those same terms are at issue here. So. 9 BY MR. BLUESTONE: 10 Q. Well, I -- I just want to make sure. The 11 question, simply, sitting here today: 12 There's nothing that you recall that would 13 reflect that prior testimony as being inaccurate or not 14 truthful; correct? 15 MR. COHEN: Same objection. 16 A. Well, I -- I -- I have not reviewed that 17 testimony and studied it. So -- but no, nothing I 18 recall without looking at it. 19 BY MR. BLUESTONE: 20 Q. Okay. Thank you. 21 With respect to Exhibit 1, your declaration 22 that's in front of you, when did you first begin to 23 form your opinions concerning the plain meaning of the 24 terms addressed in that declaration? 25 A. I believe I began working on this case</p>	<p style="text-align: right;">Page 12</p> <p>1 claims? 2 A. Well, I obviously read the claims and read 3 the specification, and based on my background and 4 experience and the state of the art in the late 90's -- 5 '98, '99 -- then I developed my opinions as to how one 6 of ordinary skill in the art at that time would have 7 interpreted these claims. 8 Q. And would you have also reviewed the file 9 history of the patents? 10 A. I have looked at the file histories, yes. 11 Q. Okay. When you say you've looked at them, 12 have you looked at them completely, or just portions of 13 the file histories? 14 A. I have not read them cover to cover like a 15 novel, but I've looked at sections I thought were 16 relevant, yes. 17 Q. Okay. And you have reviewed the file 18 history of the '107 patent; correct? 19 A. I have, yes. 20 Q. If you can turn to Exhibit 1, the first 21 paragraph, it mentions that you have been asked by 22 plaintiffs to provide opinions as to one of ordinary 23 skill in the art regarding the meaning of certain terms 24 in the four patents-in-suit. 25 Do you see that?</p>
<p style="text-align: right;">Page 11</p> <p>1 about last August. And so I've had a number of 2 discussions between then and -- and the time this 3 document was issued. 4 Q. Okay. And specifically when would you have 5 begun to form your opinions concerning what the plain 6 meaning of the terms is? Would that trace back to 7 August as well? 8 A. Yes, pretty much because, you know, you -- 9 to me, you have to sort of know what the terms mean or 10 you can't understand much else. I mean, if you're -- 11 so yes, I would say at least in general back to then. 12 Q. And when you say August, we are talking 13 August 2015; is that correct? 14 A. Yes, I -- correct, yes. 15 Q. Did your understanding of the plain meaning 16 of the terms ever change during the course of your 17 analysis? 18 A. Certainly as I studied and got greater 19 insight, it was refined. But no, I never said, "Gee, I 20 think this means black and now it means white." 21 Q. Okay. But there could have been some 22 refinement over time? 23 A. I -- I think there always could be. 24 Q. Okay. In general how did you go about 25 determining the plain meaning of the terms in the</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Yes, I do. 2 Q. And your declaration addressed the several 3 terms; correct? 4 A. Yes. 5 Q. Are there any terms that you were asked to 6 consider that didn't make their way into this report 7 for which you have opinions? 8 MR. COHEN: Objection, form. 9 A. No, I don't believe so. 10 BY MR. BLUESTONE: 11 Q. In forming your opinions, did you consider 12 the Court's rulings in the prior case that settled on 13 the meaning of the claim terms? 14 A. I was aware of it certainly, but again, 15 these -- these terms are different than those terms and 16 they are predominantly about different patents than 17 that one. So. 18 Q. But the '012 patent is the same patent in 19 this case; correct? 20 A. It is the same patent, but different -- 21 different terms are at issue here. 22 Q. Okay. Did you consider any of your prior 23 analysis related to the '012, '760, '107 -- sorry. Let 24 me scratch that. 25 Did you consider any of your prior analysis</p>

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<p style="text-align: right;">Page 14</p> <p>1 related to the '012 patent in forming your opinions 2 contained in this declaration in Exhibit 1? 3 A. I did not explicitly go back and look 4 through the last case and say, hey, what did I do 5 there; if that's what you are asking, no, I did not. 6 Q. Okay. Do you recall that when the last 7 time you would have reviewed any of your declarations, 8 reports, or statements from the prior case? 9 A. Not offhand, no. 10 Q. Okay. Let's turn to section of Exhibit 1 11 that's Paragraphs 75 through 85 where you are 12 discussing "loop formed over." 13 A. Okay. 14 Q. In this section you take issue with 15 defendants' proposed definition of looped formed over 16 meaning "a complete circuit that includes," and then 17 open bracket, "at least one of the conductors of the 18 first pair and at least one of the conductors of the 19 second pair," end bracket. 20 You state in Paragraph 77 that -- that you 21 disagree that it means a complete circuit. 22 Can you give us an explanation as to what's 23 wrong with "complete circuit"? 24 A. Yes. Basically, to me, the loop means that 25 you have the wires going out and you have a path</p>	<p style="text-align: right;">Page 16</p> <p>1 one side and the wires on the other side to connect to 2 the -- to the remote equipment. 3 BY MR. BLUESTONE: 4 Q. Do the wires have to be connected on the 5 remote equipment side to constitute a loop? 6 A. Well, when we say loop formed, if -- if we 7 assume that they are connected and then there's a path 8 between contacts on the far end, but there's not 9 necessarily -- I'm sorry -- the terminal end, there's 10 not necessarily one on the central equipment end. 11 Q. Okay. Why don't we take a look at Claim 1 12 of the '760 patent. 13 A. Okay. I have this. 14 Q. And, again, whichever way you are 15 comfortable with is fine with me, either the patent or 16 Exhibit 6. 17 A. Okay. I have my ... 18 MR. COHEN: David, just to be clear, you 19 are representing this is an exact copy of Claim 1 of 20 the '760 -- 21 MR. BLUESTONE: Yes, sir. 22 MR. COHEN: -- so I don't have to check it 23 word for word. 24 MR. BLUESTONE: Yeah, it's literally 25 copying and pasting the image from the PDFs.</p>
<p style="text-align: right;">Page 15</p> <p>1 through the far end and you have the wires coming back, 2 and to have complete circuit you would have to have 3 something connected across the near end as well too. 4 Q. Can you define what you mean by "the near 5 end"? 6 A. I'm sorry. The central equipment. The 7 central equipment. 8 Q. Okay. So the complete circuit objection 9 that you have is that it would require a connection to 10 the -- the central module in the path? 11 MR. COHEN: Objection, form. 12 A. No. 13 BY MR. BLUESTONE: 14 Q. Okay. And we might have to discuss this 15 for a little bit until I -- until I can understand what 16 the difference is. 17 How -- what constitutes the -- the loop in 18 the embodiments of the '760 patent? 19 MR. COHEN: Objection, form. 20 A. "Loop" is a term really that comes from 21 telecommunications. It refers to pairs of wires that 22 go from the central equipment to the terminal equipment 23 and is typically used whether anything is connected to 24 them or not. It's still called the loop. And when we 25 say a loop formed over, that means using the wires on</p>	<p style="text-align: right;">Page 17</p> <p>1 MR. COHEN: Thank you. 2 BY MR. BLUESTONE: 3 Q. So if we go and take a look at -- the other 4 advantage of this is it is showing some line numbers, 5 which hopefully is helpful here. 6 A. Yes. 7 Q. If you can draw your attention to what's -- 8 what's phrased here on, let's say, row 23 to 25. In 9 '760 Claim 1, it says: 10 "The first and second pairs physically 11 connect between the piece of BaseT Ethernet terminal 12 equipment and the piece of central BaseT Ethernet 13 equipment." 14 Do you see that? 15 A. I do. 16 Q. Doesn't the claim already require a 17 physical connection? 18 MR. COHEN: Objection, form. 19 A. That -- that really was not part of my 20 analysis of the loop. My comment about the loop stands 21 whether or not the wires are connected. 22 BY MR. BLUESTONE: 23 Q. So do you have any opinion as to whether or 24 not first and second pairs physically connect between, 25 and the rest of that language, requires that the first</p>

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<p style="text-align: right;">Page 18</p> <p>1 and second pairs are physically connected?</p> <p>2 A. I have not formed an opinion about that,</p> <p>3 no. I was not asked to look at that, and I have not</p> <p>4 formed an opinion about that specific issue.</p> <p>5 Q. So is it your position that loop would be</p> <p>6 satisfied by merely an Ethernet cable like a cat 5</p> <p>7 Ethernet cable?</p> <p>8 MR. COHEN: Objection, form.</p> <p>9 A. Well, what I said was a round trip path</p> <p>10 formed over at least one of the conductors in the first</p> <p>11 pair and at least one in the second pair. Which is --</p> <p>12 which, to me, is the traditional, plain and ordinary</p> <p>13 meaning of loop.</p> <p>14 BY MR. BLUESTONE:</p> <p>15 Q. Okay. And does that encompass -- if I</p> <p>16 handed you a cat 5 Ethernet cable and just put it in</p> <p>17 front of you, would that have all the elements</p> <p>18 necessary for a loop under Claim 1 of the '760 patent?</p> <p>19 MR. COHEN: Objection, form.</p> <p>20 A. I haven't really thought about that.</p> <p>21 Typically, a loop is between the central and the</p> <p>22 terminal equipment, and if that's what you were going</p> <p>23 to use it for, then I suppose it could.</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. And even if that Ethernet cable is not</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Fair enough. So in that circumstance you</p> <p>2 just recited, if the wires are not connected to the</p> <p>3 remote equipment and not connected to the common --</p> <p>4 sorry, the central equipment, does that affect whether</p> <p>5 there is a loop?</p> <p>6 MR. COHEN: Objection, form.</p> <p>7 A. I'm sorry. Can you repeat that?</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. If, in your example, you said -- if we</p> <p>10 assume that the cables are connected right for the</p> <p>11 moment between -- and I think we corrected this -- the</p> <p>12 central equipment and the remote equipment -- that was</p> <p>13 the hypothetical you suggested; correct?</p> <p>14 A. (Nods head up and down.)</p> <p>15 Q. What if we changed that hypothetical such</p> <p>16 that they're not connected? It's not connected to the</p> <p>17 central module or the remote module. Do we still have</p> <p>18 a loop?</p> <p>19 A. Well, you have the pairs of wires running</p> <p>20 out. Whether you want to call that a loop, I guess, is</p> <p>21 up to you. But, again, my objection was the complete</p> <p>22 circuit, and my position is that even if they are</p> <p>23 connected, you don't necessarily have a complete</p> <p>24 circuit. So it's essentially adding an element to that</p> <p>25 claim that was not there.</p>
<p style="text-align: right;">Page 19</p> <p>1 connected to anything -- so let's say, given your</p> <p>2 hypothetical, have you the central module, you have a</p> <p>3 cat 5 Ethernet cable, and then you have a remote</p> <p>4 module, but none -- the three things are not connected.</p> <p>5 Do you have a loop?</p> <p>6 A. You could look at the pair of wires as a</p> <p>7 loop if you wanted to, but my comment about loop formed</p> <p>8 over was not directed to that at all. Really whether</p> <p>9 or not they're connected, a complete circuit is</p> <p>10 different than a loop in that.</p> <p>11 Q. Okay. So can you explain the difference</p> <p>12 between round trip path as you propose in the complete</p> <p>13 circuit?</p> <p>14 A. Okay. If we assume the cables are</p> <p>15 connected -- right? -- for the moment between the</p> <p>16 common equipment and the remote equipment, then there</p> <p>17 would be a path out one set of conductors through the</p> <p>18 terminal equipment and back on the other set of the</p> <p>19 conductors. Right? And that -- that's a round trip</p> <p>20 path.</p> <p>21 Q. Okay. And you said "common equipment."</p> <p>22 Did you mean central equipment?</p> <p>23 A. Central. I'm sorry. I mean central, yes.</p> <p>24 Q. Just wanted to make the record was clear?</p> <p>25 A. Let another telephone term slip.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. So unfortunately, whether we call that a</p> <p>2 loop, it can't be up to me; unfortunately, I need to</p> <p>3 get your opinion. That's the term that you are opining</p> <p>4 on.</p> <p>5 A. Right.</p> <p>6 Q. Does that pair of wires running together</p> <p>7 without any connection between the pairs constitute a</p> <p>8 loop?</p> <p>9 A. In a wiring sense, yes, it would.</p> <p>10 Q. In the sense of this claim, does it?</p> <p>11 A. In the sense of this claim, I haven't</p> <p>12 really analyzed that. I mean, I don't have an opinion</p> <p>13 about this physically connected statement which you</p> <p>14 mentioned here. My concern was that the requiring of a</p> <p>15 complete circuit adds an element to this claim which,</p> <p>16 in my opinion, is not there even if the wires are</p> <p>17 connected.</p> <p>18 Q. Okay. And we can -- we can go into that.</p> <p>19 I'll make a note that we dig into that.</p> <p>20 But what I want to try and wrap up here is</p> <p>21 to make sure that I understand what loop formed over</p> <p>22 means to a person of ordinary skill in the art in your</p> <p>23 opinion and how round trip path clarifies that meaning.</p> <p>24 A. Right.</p> <p>25 Q. And here's my question:</p>

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<p style="text-align: right;">Page 22</p> <p>1 If we have the pairs of wires but there's</p> <p>2 no connection between the pairs on either side --</p> <p>3 A. Right.</p> <p>4 Q. -- is there any manner in which it can be</p> <p>5 constituting a round trip path?</p> <p>6 MR. COHEN: Objection. Outside the scope</p> <p>7 of the deposition.</p> <p>8 A. Again, I think that's an issue which -- I</p> <p>9 mean, you're asking for opinion which I have not stated</p> <p>10 yet.</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. Well, I mean, you say that --</p> <p>13 A. Well, it seems to me that this is more of</p> <p>14 an infringement issue which we have not -- I have not</p> <p>15 issued any positions on infringement yet. Whether it</p> <p>16 has to be connected or not is a different issue than if</p> <p>17 it's connected, does it have to be a complete circuit.</p> <p>18 Q. Okay. So again, I want to listen -- elicit</p> <p>19 my -- your understanding of what the claim terms cover,</p> <p>20 what the scope of the claims cover. Claim 1 of the</p> <p>21 '760 patent says the first and second pairs physically</p> <p>22 connect between the piece of BaseT Ethernet terminal</p> <p>23 equipment and the piece of central BaseT terminal</p> <p>24 equipment.</p> <p>25 Does that require a physical connection?</p>	<p style="text-align: right;">Page 24</p> <p>1 wires?</p> <p>2 MR. COHEN: Objection. Beyond the scope of</p> <p>3 the deposition.</p> <p>4 A. And I -- I don't understand the question.</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. Okay. The rest of it says that the piece</p> <p>7 essential BaseT Ethernet equipment is to detect at</p> <p>8 least two different magnitudes of current flow through</p> <p>9 the loop.</p> <p>10 A. Right.</p> <p>11 Q. Does that clause have any effect on your</p> <p>12 understanding of what loop formed over means?</p> <p>13 A. Well, my -- no. My opinion is that loop</p> <p>14 formed over does not require there to be current</p> <p>15 flowing at that time. You can have a loop without</p> <p>16 there being current in it.</p> <p>17 Q. Okay. Can you detect different magnitudes</p> <p>18 of current flow through the loop without the pairs</p> <p>19 being physically connected to the Ethernet terminal</p> <p>20 equipment?</p> <p>21 MR. COHEN: Objection. Beyond the scope of</p> <p>22 the deposition.</p> <p>23 A. And, once again, whether or not it's a loop</p> <p>24 according to this claim is not dependent on whether you</p> <p>25 can detect anything over it. It's -- I mean, it's</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. COHEN: Objection. Beyond the scope of</p> <p>2 the deposition.</p> <p>3 A. And, again, as I was saying, to me, that is</p> <p>4 an infringement issue not a claim construction issue</p> <p>5 and is not -- my opinion on loop is -- is not affected</p> <p>6 by that one way or the other.</p> <p>7 BY MR. BLUESTONE:</p> <p>8 Q. It doesn't affect it at all?</p> <p>9 A. No. I mean, if and when they are</p> <p>10 connected, a loop still does not require a complete</p> <p>11 circuit. By the -- by the wording of this claim.</p> <p>12 Q. Let's talk about the wording of the claim</p> <p>13 starting at line 30 through line -- well, actually,</p> <p>14 through just the rest of the claim. I'll give you a</p> <p>15 chance just to review it, and I'll ask my question when</p> <p>16 you are ready, sir.</p> <p>17 A. Okay.</p> <p>18 Q. Okay. So the claim recites that the loop</p> <p>19 is formed over at least one of the conductors of the</p> <p>20 first pair.</p> <p>21 A. Right.</p> <p>22 Q. And at least one of the conductors of the</p> <p>23 second pair.</p> <p>24 A. Right.</p> <p>25 Q. Can that encompass just the two pairs of</p>	<p style="text-align: right;">Page 25</p> <p>1 either a loop or it isn't, and -- and a loop, to me,</p> <p>2 does not imply and certainly does not state here that</p> <p>3 there is a complete circuit. There can be in some</p> <p>4 occasions, but there -- it does not require a complete</p> <p>5 circuit.</p> <p>6 BY MR. BLUESTONE:</p> <p>7 Q. Okay. So let's assume that first and</p> <p>8 second pairs physically connect.</p> <p>9 A. Okay.</p> <p>10 Q. Means that the first and second pairs</p> <p>11 physically connect between the piece of BaseT Ethernet</p> <p>12 terminal equipment and the piece of central BaseT</p> <p>13 Ethernet equipment.</p> <p>14 A. Right.</p> <p>15 Q. In that instance, why would the loop not be</p> <p>16 a complete circuit?</p> <p>17 A. Okay. In that instance if we assume the</p> <p>18 cables are connected, all right, the -- let me get my</p> <p>19 line number here.</p> <p>20 According to lines 27, 28, the piece of</p> <p>21 BaseT terminal equipment has at least one path to draw</p> <p>22 current. Correct?</p> <p>23 And by 26 and 27, the piece of central</p> <p>24 BaseT Ethernet equipment has at least one DC supply.</p> <p>25 Correct?</p>

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<p style="text-align: right;">Page 26</p> <p>1 But nothing in the claim requires that DC</p> <p>2 supply to be connected to the pair at that time nor</p> <p>3 does it require any path through the central equipment</p> <p>4 at all times. So it requires a path at the terminal</p> <p>5 end, but it does not require a path at the central end</p> <p>6 and, therefore, it's not necessarily a complete</p> <p>7 circuit.</p> <p>8 Q. So I'm a little confused because it seems</p> <p>9 like what you are saying is that even under the</p> <p>10 hypothetical circumstance by which the first and second</p> <p>11 pairs are physically connecting this Ethernet terminal</p> <p>12 equipment and the central equipment --</p> <p>13 A. Right.</p> <p>14 Q. -- that in that circumstance there still is</p> <p>15 no path on the central terminal equipment side. I</p> <p>16 don't understand how that's possible.</p> <p>17 MR. COHEN: Objection, form.</p> <p>18 A. Can you rephrase?</p> <p>19 BY MR. BLUESTONE:</p> <p>20 Q. I don't understand your -- your</p> <p>21 circumstance by which even if we are assuming that the</p> <p>22 first and second pairs are creating a physical</p> <p>23 connection between the BaseT and the central bay -- the</p> <p>24 central equipment -- sorry -- the piece of BaseT</p> <p>25 Ethernet terminal equipment and the piece of central</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. So this claim term talks about a loop</p> <p>2 formed over the conductors, et cetera?</p> <p>3 A. Right. Mm-hmm.</p> <p>4 Q. Does the path -- the separate term "path"</p> <p>5 in the claim -- have to be part of the "loop," that</p> <p>6 term in the claim?</p> <p>7 A. Well, the way I see -- again, what I said</p> <p>8 the claim means, a roundtrip path formed over the</p> <p>9 conductors of the two things; right? And so starting</p> <p>10 from the central Ethernet equipment, you have a path</p> <p>11 that goes out through one conductor, through the path</p> <p>12 which is in the terminal equipment, and back on the</p> <p>13 other one. And that's a round trip path. And when you</p> <p>14 connect something in the central equipment, you will</p> <p>15 have a complete circuit; but the claim does not require</p> <p>16 that to be connected at all times, so it is not</p> <p>17 necessarily a complete circuit.</p> <p>18 Q. Okay. So looking at this claim on the</p> <p>19 '760, you, sitting here today, do not have an opinion</p> <p>20 on what "physically connect" means?</p> <p>21 A. What "physically connect" means in terms of</p> <p>22 what?</p> <p>23 Q. In terms of its recitation in Claim 1 of</p> <p>24 the '760 patent.</p> <p>25 A. In terms -- you're asking must -- must it</p>
<p style="text-align: right;">Page 27</p> <p>1 BaseT Ethernet equipment --</p> <p>2 A. Right.</p> <p>3 Q. -- how that does not create a -- I think</p> <p>4 you said, path on the central equipment side.</p> <p>5 A. Right.</p> <p>6 Q. Can you explain that?</p> <p>7 A. Well, the -- the claim clearly requires a</p> <p>8 path on the BaseT Ethernet terminal equipment and</p> <p>9 through that equipment. Right? I don't see anything</p> <p>10 in here that requires a path at all times through the</p> <p>11 central equipment. It says it has a power supply.</p> <p>12 Q. Okay. So now we're talking about the claim</p> <p>13 term "path" is your point. Your point -- let me make</p> <p>14 sure I understand it; please clarify me if I'm wrong --</p> <p>15 A. Right.</p> <p>16 Q. -- in any respect, your point is that the</p> <p>17 path as required in the claim of '760 doesn't require</p> <p>18 it to be present in the central equipment at all. Is</p> <p>19 that correct?</p> <p>20 A. At all times, yes.</p> <p>21 Q. Okay. And does that mean that the path is</p> <p>22 not necessarily subsumed in the loop?</p> <p>23 MR. COHEN: Objection, form.</p> <p>24 A. I -- I don't understand.</p> <p>25 BY MR. BLUESTONE:</p>	<p style="text-align: right;">Page 29</p> <p>1 be physically connected in order to infringe? Is</p> <p>2 that --</p> <p>3 Q. I'm asking whether you have an opinion,</p> <p>4 sitting here today, as to what "physically connect"</p> <p>5 means in Claim 1 of the '760 patent.</p> <p>6 A. I -- I do not have an opinion as to what</p> <p>7 that means in terms of the overall claim, no.</p> <p>8 Q. Okay. So it's just as plausible, sitting</p> <p>9 here today, that "physically connect" requires a</p> <p>10 physical connection or just merely be rewritten as</p> <p>11 operable to be physically connected, in your mind?</p> <p>12 MR. COHEN: Objection, form. Beyond the</p> <p>13 scope of the deposition.</p> <p>14 A. No, I -- I didn't say that. I said I don't</p> <p>15 have an opinion.</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. But sitting here today, you can't tell me</p> <p>18 which one's right or wrong?</p> <p>19 MR. COHEN: Same objections.</p> <p>20 A. As I said, I -- I don't have an opinion.</p> <p>21 And I would want to do more careful study and research</p> <p>22 before I made an opinion.</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. Okay. So just to make sure I understand,</p> <p>25 the claim starting at line 30 requires a loop that's</p>

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<p style="text-align: right;">Page 30</p> <p>1 formed over at least one of the conductors of the first</p> <p>2 pair and at least one of the conductors of the second</p> <p>3 pair. Correct? It says that.</p> <p>4 A. It says that.</p> <p>5 Q. And the claim on line 19 recites a data</p> <p>6 signaling pairs of conductors; correct?</p> <p>7 A. 19 -- yes.</p> <p>8 Q. And that, those data signaling pairs of</p> <p>9 conductors, are what the loop is formed over; correct?</p> <p>10 A. Yes, those are the conductors that are</p> <p>11 referred to.</p> <p>12 Q. And the pairs of conductors are defined to</p> <p>13 comprise first and second pairs used to carry BaseT</p> <p>14 Ethernet communication signals between the piece of</p> <p>15 central BaseT Ethernet equipment and the piece of BaseT</p> <p>16 Ethernet terminal equipment. Correct?</p> <p>17 A. I'm sorry. Can you run that by me again?</p> <p>18 Q. The data signaling pairs starting on</p> <p>19 line 19 are defined to comprise first and second pairs</p> <p>20 used to carry BaseT Ethernet communication signals</p> <p>21 between the piece of central BaseT Ethernet equipment</p> <p>22 and the piece of BaseT Ethernet terminal equipment.</p> <p>23 Correct?</p> <p>24 A. Yes.</p> <p>25 Q. That's one requirement of the data</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. But it requires a round trip path under</p> <p>2 your opinion?</p> <p>3 MR. COHEN: Objection, form.</p> <p>4 A. When it's operating, it requires that, yes.</p> <p>5 I did not take an opinion issue -- make an opinion upon</p> <p>6 whether it is configured to do that or whether it must</p> <p>7 actually be doing that and so on, right.</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. So you don't have an opinion as to whether</p> <p>10 the claim requires in this system the central BaseT</p> <p>11 equipment, the piece of BaseT -- sorry, let me start</p> <p>12 over.</p> <p>13 You don't have any opinion as to whether</p> <p>14 the claim requires a piece of central BaseT Ethernet</p> <p>15 equipment, a piece of BaseT Ethernet terminal</p> <p>16 equipment, and the data signaling pairs to be connected</p> <p>17 in any way. You don't -- you don't know which way it</p> <p>18 would -- would work --</p> <p>19 MR. COHEN: Objection.</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. -- under the claim?</p> <p>22 MR. COHEN: Form.</p> <p>23 A. Yeah, I mean, I -- I can read the claim as</p> <p>24 it is here, and I see what the pieces are, but you are</p> <p>25 asking me for an opinion about something which is --</p>
<p style="text-align: right;">Page 31</p> <p>1 signaling pairs; correct?</p> <p>2 A. That is.</p> <p>3 Q. And an additional requirement of the data</p> <p>4 signaling pairs that the loop is formed over is also</p> <p>5 that the first and second pairs physically connect</p> <p>6 between the piece of BaseT Ethernet terminal equipment</p> <p>7 and the piece of central BaseT Ethernet equipment?</p> <p>8 MR. COHEN: Objection, form. Beyond the</p> <p>9 scope of the deposition.</p> <p>10 A. That's what it says, yes.</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. Okay. And sitting here today -- scratch</p> <p>13 that.</p> <p>14 And in preparing your analysis of a loop</p> <p>15 formed over, you did not consider what the meaning of</p> <p>16 the content in lines 23 through 25 is?</p> <p>17 A. I did not consider that relevant to the</p> <p>18 meaning of loop because, in my opinion -- my comments,</p> <p>19 my opinions here -- are accurate whether or not the --</p> <p>20 the conductors are connected, that -- that the -- even</p> <p>21 if they're connected, all -- it still doesn't require a</p> <p>22 complete path. So I did not take an opinion on whether</p> <p>23 they must be connected, but I did take an opinion that</p> <p>24 even if they are connected, the claim does not require</p> <p>25 a complete circuit.</p>	<p style="text-align: right;">Page 33</p> <p>1 was not involved with the claim construction and which</p> <p>2 I have not formed an opinion yet.</p> <p>3 BY MR. BLUESTONE:</p> <p>4 Q. But when you were stating what the meaning</p> <p>5 of these terms are, you would, of course, look at the</p> <p>6 plain meaning of the claims to consider the meaning of</p> <p>7 a clause in the claims; right?</p> <p>8 A. Yes.</p> <p>9 Q. But it sounds to me like what you are</p> <p>10 saying is you didn't actually do that. You didn't look</p> <p>11 at the entire claim then?</p> <p>12 MR. COHEN: Objection, form.</p> <p>13 A. I did look at the entire claim, and I did</p> <p>14 not think that particular section was relevant because</p> <p>15 the defendants' construction, in my opinion, was</p> <p>16 incorrect even if they are connected.</p> <p>17 BY MR. BLUESTONE:</p> <p>18 Q. No, and I understand that. And to be</p> <p>19 perfectly candid, my hope is that we can find some</p> <p>20 language that we agree upon and that this is not</p> <p>21 something that is a contested issue. Like, what is the</p> <p>22 loop formed over, hopefully we can find an agreement</p> <p>23 on. Obviously, no question there. I'm just trying to</p> <p>24 frame the issue.</p> <p>25 A. Right.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Q. I understand that you disagree with 2 complete circuit. Now I'd like to switch gears and 3 make sure I understand what return -- sorry, let me 4 make sure I get the exact language of what you said. 5 Pardon me for a second. 6 I'm going to point you to paragraph 78 7 where you say: 8 "A person of ordinary skill in the art, 9 reading the claims in light of the specification and 10 file history" -- let me just stop right there. 11 Would a person of ordinary skill in the art 12 also look at the remainder of the language in the claim 13 to understand what loop formed over means? 14 A. Yes, I believe so. I think you interpret 15 the claim as a whole. 16 Q. Okay. They "would understand that the 17 phrase "loop formed over" would have its plain and 18 ordinary meaning, which is a round trip path formed 19 over," and then you recite the first -- "at least one 20 of the conductors of the first pair of conductors and 21 at least one of the conductors of the second pair of 22 conductors." 23 Do you see that in paragraph 78? 24 A. Yes, I do. 25 Q. How do you have a round trip path without</p>	<p style="text-align: right;">Page 36</p> <p>1 patent would encompass a central piece of Ethernet 2 terminal equipment or -- sorry, a central piece of -- a 3 piece of central BaseT Ethernet equipment sitting in 4 Cleveland, you have a piece of BaseT Ethernet terminal 5 equipment sitting in Chicago, and we have an Ethernet 6 cable sitting here. 7 You wouldn't have an opinion on whether 8 that circumstance would be encompassed in the scope of 9 Claim 1 on the '760 patent? 10 MR. COHEN: Objection, form. 11 A. Well, once again, you are getting into an 12 infringement issue. 13 MR. COHEN: Let me finish my objection. 14 THE WITNESS: Okay. 15 MR. COHEN: Objection, form and beyond the 16 scope of the deposition. 17 A. Yeah, once again, you are getting into 18 infringement issues which I have not addressed yet. I 19 have not issued any opinions yet. 20 BY MR. BLUESTONE: 21 Q. I'm asking whether the scope of the claim 22 encompasses this. I'm not asking you about the devices 23 that are accused from infringement in the case. 24 I'm giving you just straight out, there's 25 these three claim elements in the claim: Central BaseT</p>
<p style="text-align: right;">Page 35</p> <p>1 the pairs being physically connected? 2 A. Well, you have -- you have a round trip 3 path when they are physically connected, but you don't 4 necessarily have a complete circuit. 5 Q. Forget about complete circuit. I just want 6 to understand about round trip path. Do I have a round 7 trip path with just the two pairs of wires not being 8 connected in any way? 9 A. No. You have a round trip path when they 10 are connected, but when they have to be connected is 11 not -- the definition of that loop does not depend on 12 when they have to be connected. It's when they are 13 connected then you have that. 14 Q. So when pairs are wires are connected -- 15 A. Right. 16 Q. -- you have a round trip path? 17 A. Correct. 18 Q. When the pairs of wires are not connected, 19 do you have a round trip path? 20 A. Well, no, you don't have a round trip path 21 because you have a loop of wire hanging out there, but 22 there's no round trip path until you put something on 23 the far end. 24 Q. Okay. So sitting here today, you wouldn't 25 have an opinion as to whether Claim 1 of the '760</p>	<p style="text-align: right;">Page 37</p> <p>1 Ethernet terminal equipment, BaseT Ethernet terminal 2 equipment, and these data signaling pairs? 3 A. Right. 4 MR. COHEN: Same objections. Sorry. 5 MR. BLUESTONE: That's okay. 6 BY MR. BLUESTONE: 7 Q. You have no opinion as to whether those 8 components can be in three different cities and still 9 be encompassed in the scope of this claim? 10 MR. COHEN: Same objections. 11 A. I have no opinion on that. 12 BY MR. BLUESTONE: 13 Q. So it's possible that that could read on 14 the claim? 15 MR. COHEN: Same objections. 16 BY MR. BLUESTONE: 17 Q. You don't know either way. 18 A. I don't know either way. 19 Q. Now, what if I took your pairs of wires and 20 they are connected and I cut one of the pairs with a 21 scissors so that there's no continuity in one of those 22 pairs. 23 Do I still have a loop in that 24 circumstance? 25 MR. COHEN: Same objections.</p>

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<p style="text-align: right;">Page 38</p> <p>1 A. Well, it would no longer be a round trip 2 path if it's cut. 3 BY MR. BLUESTONE: 4 Q. Okay. All right. Let's talk about the 5 path coupled across starting on paragraph 86 here. 6 Early in -- earlier in your report you 7 state that current is the flow of electric charge. Is 8 that correct? 9 A. I believe so, yes. 10 Q. And you state that DC current is direct 11 current; correct? 12 A. I believe so, yes. 13 Q. Can you -- can you explain what a person of 14 ordinary skill in the art would understand direct 15 current to encompass? 16 MR. COHEN: Objection. Beyond the scope of 17 the deposition. 18 A. Yes. Direct current is current which is 19 flowing in one direction. It's not reversing 20 direction. 21 BY MR. BLUESTONE: 22 Q. Okay. Now, does direct current allow for a 23 varying DC current signal? 24 MR. COHEN: Objection, form. 25 A. You are asking -- well, DC current does not</p>	<p style="text-align: right;">Page 40</p> <p>1 BY MR. BLUESTONE: 2 Q. Okay. 3 MR. BLUESTONE: So let's mark the next 4 exhibit as Exhibit 7 here. 5 (Marked Deposition Ex. 7) 6 BY MR. BLUESTONE: 7 Q. And this is pages from the McGraw-Hill 8 Electronics Dictionary, which I believe you cite to in 9 your report in paragraph 89. Correct? 10 A. I did cite to it in one place, yes. 11 Q. If we look at Claim 1 of the '107 patent 12 and I draw your attention to line 15, it says, "the at 13 least one path coupled across at least one of the 14 contacts of the first pair of contacts and at least one 15 of the contacts of the second pair of contacts." 16 Do you see that, sir? 17 A. Yes. 18 Q. The phrase "one path coupled across," 19 "coupled" is being used as a verb -- correct? -- on 20 line 15? 21 MR. COHEN: Objection, form. 22 A. Well, I'm not an English major, but it 23 looks that way to me, yes. 24 BY MR. BLUESTONE: 25 Q. Okay. You chose to reference the</p>
<p style="text-align: right;">Page 39</p> <p>1 have to have a constant value for all time, no. 2 BY MR. BLUESTONE: 3 Q. Okay. So DC current wouldn't be 4 necessarily the same thing as just a DC offset; 5 correct? 6 MR. COHEN: Objection, form. Beyond the 7 scope of the deposition. 8 A. Can you clarify? 9 BY MR. BLUESTONE: 10 Q. So DC current, you are saying, can change 11 over time; correct? 12 A. Can change in magnitude, yes. 13 Q. Can change in magnitude, but it always has 14 to stay above zero. It can't change polarities; 15 correct? 16 A. Right. It doesn't reverse direction. It 17 goes one way or the other. 18 Q. Okay. So can DC current encompass a 19 unchanging DC component and an AC varying component 20 superimposed on that unchanging DC component? 21 MR. COHEN: Objection, form. Beyond the 22 scope of the deposition. 23 A. Yeah, I -- I don't know that I said 24 anything in here related to that, but yes, it does not 25 have to have the same magnitude at all times.</p>	<p style="text-align: right;">Page 41</p> <p>1 definition of "coupling" on page 100. Isn't that 2 correct? 3 A. Coupling ... yes, I did. 4 Q. But you didn't reference -- well, and 5 "coupling" is -- is a noun; correct? 6 MR. COHEN: Objection, form. 7 A. Okay. 8 BY MR. BLUESTONE: 9 Q. You don't disagree with me, do you? 10 A. Coupling ... it could be a noun. It could 11 be an adjective. Depends on how you use it. 12 Q. Okay. Now, above, it says there's a 13 definition two above that's "couple." 14 A. Couple, yes. 15 Q. One relating a thermo couple and then 16 there's a second definition of couple that says, "To 17 connect two circuits so signals are transferred from 18 one to the other." 19 Do you see that? 20 A. I do. 21 Q. Do you have any opinion as to whether that 22 definition of couple is applicable to the claims that 23 recite "path coupled across"? 24 A. No, it is referring to coupling in the 25 sense -- they are -- they are coupled in the sense of</p>

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<p style="text-align: right;">Page 42</p> <p>1 coupling here, "A mutual relation between ... that 2 permits energy transfer from one to the other," which 3 is very similar to definition 2 under "couple," which 4 is, "To connect two circuits so signals are transferred 5 from one to the other." That's the point is that you 6 can transfer signals from one to the other. 7 Q. Okay. So do you have any objection to the 8 use of that second definition of "couple" as applied to 9 "path coupled across"? 10 A. Well, again, I -- I object to the use of 11 the word "connect." Because "connect" could be 12 interpreted as directly soldered on with nothing 13 intervening rather than simply able to -- to couple a 14 signal to that point. 15 Q. Well, what about the definition, "To 16 connect two circuits so signals are transferred from 17 one to the other"? 18 A. Well, I -- I mean, I think the definition 19 for coupling exactly corresponds to what is meant here. 20 If there's coupling between them, they're coupled. 21 Q. Okay. Well, maybe we can use some examples 22 to try and flesh this out a little bit. 23 (Marked Deposition Ex. 8) 24 BY MR. BLUESTONE: 25 Q. I have marked Exhibit 8. Exhibit 8 is a</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. One that shows in -- sorry. I just don't 2 want to be talking over -- 3 A. Oh, I'm sorry. Yes. I see that. 4 Q. Okay. Thank you. 5 At the bottom of page 17, this other 6 drawing shows a Ethernet connector and a path coupled 7 across its contacts, in particular, here between 8 contacts 1 and 8. Is that correct? 9 A. Yes. 10 Q. And in drawing this, you wanted to show a 11 path between two contacts, so you selected 1 and 8 and 12 just made a connection between them. 13 MR. COHEN: Objection, form. 14 A. I did, yes. 15 BY MR. BLUESTONE: 16 Q. Okay. Now, is this also an example of a 17 path that is coupled across at least one of the 18 contacts of the first pair of contacts and at least one 19 of the contacts of a second pair of contacts? 20 A. Yes, it's a path that's coupled across two 21 different contacts of the -- of a modular jack. 22 Q. Well, not just two different contacts. Is 23 it different contacts of different pairs? 24 A. Unless you wired the thing very weirdly, it 25 would be, yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 declaration from you dated on October 14th -- sorry, 2 October 20th, 2014. 3 A. Okay. 4 Q. And it related to the '012 patent. 5 A. Okay. 6 MR. COHEN: And I am going to object to its 7 use at this time simply because it wasn't part of 8 Mr. Baxter's analysis in forming this declaration. 9 MR. BLUESTONE: I understand your 10 objection. Are you not letting me ask him any 11 questions pertaining to it? 12 MR. COHEN: No, go ahead. 13 MR. BLUESTONE: Okay. 14 BY MR. BLUESTONE: 15 Q. All right. Mr. Baxter, can you turn to 16 page 17. 17 A. Yes. 18 Q. The top of page 17 shows a two-dimensional 19 cross-reference of an Ethernet connector. Correct? 20 A. This one up here? 21 Q. Yes, sir, at the top. 22 A. Yes. 23 Q. Okay. And at the bottom of page 17, there 24 is another drawing. 25 A. Right.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. How do you know what pairs are encompassed 2 in these different -- how do you know what pairs 3 pertain to this Ethernet connector as shown here on 4 page 17? 5 A. Can you -- 6 Q. Rephrase it? 7 A. Rephrase, yes. 8 Q. Sure. Of course. 9 So maybe with an example. Are the pairs 10 one and two, three-four, five-six, and seven-eight? 11 A. No. 12 Q. What are the pairs? 13 A. The pairs -- typically, standard wiring 14 would be: One-two, three-six, four-five, seven-eight. 15 Q. Okay. Is there anything in the claim that 16 allows -- that precludes it from being: One-two, 17 three-four, five-six, seven-eight, those being the 18 pairs? 19 MR. COHEN: Objection, form. Beyond the 20 scope of the deposition. 21 A. If it's an Ethernet connector, no, they 22 would not be paired that way. An Ethernet connector 23 would be paired the way -- the way I previously said. 24 BY MR. BLUESTONE: 25 Q. But -- okay. But there's nothing in this</p>

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<p style="text-align: right;">Page 46</p> <p>1 connector itself which tells you what pair system you 2 should use?</p> <p>3 A. Well, the Ethernet spec tells you what pair 4 system you should use. So if this is an Ethernet 5 connector, it would follow that.</p> <p>6 Q. So I couldn't use the Ethernet connector 7 and arrange the pins such that there's different sets 8 of pairs?</p> <p>9 MR. COHEN: Objection, form.</p> <p>10 A. Well, you wouldn't --</p> <p>11 MR. COHEN: Hang on one second.</p> <p>12 THE WITNESS: Oh.</p> <p>13 MR. COHEN: Objection, form. Beyond the 14 scope of the deposition.</p> <p>15 You can go ahead.</p> <p>16 A. All right. Can -- can you re -- or repeat 17 that?</p> <p>18 BY MR. BLUESTONE:</p> <p>19 Q. So given an RJ -- "RJ45," is that the term 20 for the modular jack?</p> <p>21 A. Right, mm-hmm.</p> <p>22 Q. Okay. So if I handed you a modular jack, 23 couldn't I set up wiring on it to arrange the pairs in 24 any way I want?</p> <p>25 A. You could.</p>	<p style="text-align: right;">Page 48</p> <p>1 and the second pair as seven-eight.</p> <p>2 Q. Okay. So all -- so the first drawing on 3 page 17, the top, just shows an Ethernet connector. 4 There's no path coupled across the first drawing on the 5 top of 17; correct?</p> <p>6 A. Correct.</p> <p>7 Q. But there is a path that's coupled across 8 on the bottom of page 17?</p> <p>9 A. Yes.</p> <p>10 Q. And there is a path coupled across on the 11 top of page 20?</p> <p>12 A. Yes.</p> <p>13 Q. What would I do to these drawings -- make 14 this easier. Pardon me. All right.</p> <p>15 (Marked Deposition Ex. 9)</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. All right. So I marked Exhibit 9, and the 18 first three pages are the items that we've already gone 19 through. And then on the last three pages, I made some 20 other examples just to see if we can flesh out an 21 understanding of what "path coupled across" in this is.</p> <p>22 So in Exhibit 9, first page, we're just 23 showing the same Ethernet connector schematic; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Page 2, we have a path coupled</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Would it no longer be an Ethernet connector 2 if I did that?</p> <p>3 A. It would no longer meet the Ethernet spec, 4 no.</p> <p>5 Q. But would it be still an Ethernet connector 6 just wired differently?</p> <p>7 A. Not in my opinion, no, because Ethernet 8 equipment wouldn't work with it.</p> <p>9 Q. Okay. What about -- would -- would it 10 still be an RJ45 modular jack, though?</p> <p>11 MR. COHEN: Same objection.</p> <p>12 A. It would still be a modular jack.</p> <p>13 BY MR. BLUESTONE:</p> <p>14 Q. Okay. All right. Let's turn to page 20.</p> <p>15 A. Of the same document?</p> <p>16 Q. Yes, sir. Thank you.</p> <p>17 Kind of the same schematic but now we have 18 a resistor in the lines.</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Does this show an example of the path 22 coupled across at least one of the contacts of the 23 first pair of contacts and at least one of the contacts 24 of the second pair of contacts?</p> <p>25 A. Yes, if we assume the first pair as one-two</p>	<p style="text-align: right;">Page 49</p> <p>1 across via that wire; correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Thank you. And it's between two 4 different pairs of contacts by virtue of the fact that 5 it's connected to 1 and 8; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Page 3 is that same resistor we were 8 talking about. Same thing, there's a path coupled 9 across two different pairs of contacts because -- by 10 virtue of it being connected to 1 and 8; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Now, on page 4, what I tried to 13 represent here -- and if it's not the prettiest 14 drawing, I apologize -- but on page 4, I basically took 15 out the resistor and put in an inductor.</p> <p>16 Do you agree with that schematically?</p> <p>17 A. Yes, that's an inductor.</p> <p>18 Q. Okay. Would this show a path coupled 19 across at least one fin of the first set -- sorry -- at 20 least one contact of the first pair of contacts and at 21 least one contact of a second pair of contacts?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, page 5, instead of using an 24 inductor, I've put in a capacitor.</p> <p>25 Does that change the analysis at all?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. I -- well, I don't know what analysis. 2 They're still coupled across the contacts. 3 Q. Okay. So in this instance, there is a path 4 coupled across at least one contact of the first pair 5 of contacts and at least one contact of the second pair 6 of contacts; correct? 7 A. Correct. 8 Q. Okay. And, now, page 6, I basically just 9 have an open switch. 10 A. Right. 11 Q. Do I have a path coupled across here? 12 A. In my opinion, you do not when the switch 13 is open. 14 Q. Okay. Okay. All right. So all of our 15 discussion to this point has been relating to just the 16 path coupled across. And I want to ask the same set of 17 questions, but I want to also make sure we're 18 incorporating the fact that the claim requires that the 19 path -- sorry, I'll direct you to Claim 1 of the '107 20 patent again, line 14. 21 A. Mm-hmm. 22 Q. That the -- the path that's coupled across, 23 as it says on line 15, that path in line 14 is recited 24 as being "for the purpose of drawing DC current." 25 A. Right.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And, now, page 5, capacitor example, in 2 this circumstance, is there a path coupled across at 3 least one contact of a first pair and at least one 4 contact of a second pair for the purpose of drawing DC 5 current? 6 A. And, again, for the purpose of drawing DC 7 current, I would say no. 8 Q. Okay. Can you explain why? 9 A. That's -- typically be called a DC blocking 10 capacitor. You'll get a little transient when you put 11 a voltage across it and that's it. You don't get a 12 steady current flow through. 13 Q. Okay. Okay. Now, page 6, I'm guessing 14 it's not going to change your answer but just to make 15 sure we've gone through everything. 16 Now we're talking about DC current. Is 17 there a path coupled across in page 6? 18 A. No. 19 Q. Okay. Now, Mr. Baxter, I can keep going on 20 or I can take a break now if you want to take a quick 21 break. Whatever your preference is. 22 A. How long have we been going? 23 Q. About an hour. For the witness, I'd like 24 to generally take a break every hour if I can. 25 A. That's fine.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And what I'd like to do just to make sure 2 we are on the same page is go through these examples 3 again and see if that path is still coupled across if 4 now it's for the purpose of drawing DC current. 5 A. Okay. 6 Q. I think we can skip probably page 1 because 7 there's no path there at all; correct? 8 A. Okay. Yes. 9 Q. Now, page 2, we now have it being for the 10 purpose of drawing DC current, is there still a path 11 coupled across at least one contact from one pair and 12 at least one contact from another pair? 13 A. Yes. 14 Q. Okay. Same question for page 3, please. 15 A. Is -- is there a path? For DC current? 16 Q. Is there a path coupled across at least one 17 contact of the first pair and at least one contact of a 18 second pair for the purpose of drawing DC current? 19 A. Yes. 20 Q. Okay. Same question page 4, please. 21 A. Yes, current will flow through there. 22 Q. Okay. 23 (The reporter asked for clarification.) 24 A. Yes, current will flow through there. The 25 DC current will flow through there.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. But it's up to you. 2 A. That's fine. Let's take a break. 3 MR. BLUESTONE: Okay. 4 VIDEOGRAPHER: We are off the record at 5 10:13 a.m. 6 (Break from 10:13 a.m. until 10:25 a.m.) 7 VIDEOGRAPHER: We are back on the record at 8 10:25 a.m. This is File 2. 9 BY MR. BLUESTONE: 10 Q. Mr. Baxter, there is -- I'll direct your 11 attention to Exhibit 1, your Paragraph 91, please. 12 A. Okay. 13 Q. When you have had a chance to review 91, 14 please let me know. 15 A. Okay. 16 Q. There's some confusion about what you mean 17 by "currents coupled through the transformer to 18 contacts at the connector." Can you elaborate on what 19 that means? 20 A. Yes. It means that the voltage source is 21 not directly connected to the contacts, it's connected 22 to the center tap at the transformer and the current 23 goes through the winding of the transformer to get to 24 the contacts. 25 Q. Is it going through just half of the</p>

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<p style="text-align: right;">Page 54</p> <p>1 transformer in that circumstance or are you saying it's 2 going across the pairs of windings? 3 A. Well, in that -- that circumstance it's 4 going through one side. You -- you've coupled to the 5 center tap of the side that's connected to the -- to 6 the contacts. 7 Q. Okay. Now, I note that you are mentioning 8 power over Ethernet equipment in Paragraph 91. The 9 patent doesn't talk about power over Ethernet 10 equipment; correct? 11 A. That's correct. 12 Q. So why is this Paragraph 91 relevant to the 13 meaning of path coupled across? 14 A. It -- it's an example of a difference 15 between coupling and directly connecting. 16 Q. Okay. Is Paragraph 91 talking about using 17 phantom power? 18 A. Well, power Ethernet does, yeah. This is 19 just an example of where you put a DC voltage on there 20 and source current through the transformer rather than 21 direct. 22 Q. But -- but is -- is that example that you 23 were citing here in Paragraph 91, is that an example 24 of -- of doing phantom power? 25 A. You could call it that, yeah.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Well, again in -- in -- in my view, 2 connection is a more restrictive term than coupling and 3 the claim says coupled, and I don't see any -- any need 4 to -- to restrict that further in the construction. 5 Q. Okay. So let's go to Paragraph 90 -- 92, 6 please, of Exhibit 1. 7 When you're saying through a transformer 8 here you are talking about just one winding? 9 A. One winding, yes. 10 Q. It's a top half? 11 A. Well, depends on what you call the top, but 12 through -- through the side that's connected to the 13 contacts, yes. 14 Q. Fair enough. Fair enough. So it would be 15 just through the primary or the secondary side, not 16 across the primary to the secondary or vice versa; is 17 that correct? 18 A. In -- in this example, yes. 19 Q. In this example. Okay. 20 Could a circumstance by which you're 21 talking about actual passing over the primary to the 22 secondary or vice versa, could that also constitute an 23 instance in which the path is coupled across? 24 MR. COHEN: Objection, form. 25 A. Yes.</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. And as of 1998 was there anything 2 new about a phantom circuit? 3 MR. COHEN: Objection, form. Beyond the 4 scope of the deposition. 5 A. I -- I would have to do more research to be 6 sure but I don't think so. 7 BY MR. BLUESTONE: 8 Q. So sitting here you're not sure whether or 9 not using phantom power is an old technique pre-dating 10 1998? 11 MR. COHEN: Same objections. 12 A. I -- I believe that it is but I would want 13 to do some research to be certain if there's exactly 14 when, where, how and so on. 15 BY MR. BLUESTONE: 16 Q. Okay. So again in this Paragraph 91 17 example, the concern -- I want to make sure I 18 understand what the concern is here. The concern is 19 that because it's going through some of the windings, 20 it may not be directly connected, is -- is that the 21 concern. 22 A. Correct. 23 Q. Is there anything in the definition of -- 24 that was proposed by defendants that required a direct 25 connection?</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MR. BLUESTONE: 2 Q. Okay. And he was -- go ahead. 3 A. Yes. In my opinion it could, yes. 4 Q. Why? 5 A. Why is that coupled? 6 Q. Yeah, why does that include a coupling? 7 A. Because transformer coupling is a very 8 standard way to -- to couple signals from one circuit 9 to another. It's ... 10 Q. Okay. 11 A. There's ... 12 Q. I'm sorry. Was there anything else? 13 A. No, that's -- 14 Q. Okay. 15 A. It's a very standard technique, transformer 16 coupling. 17 Q. Now, the claim as we just were recently 18 talking about isn't just a path coupled across, it's 19 also for the purpose of drawing DC current. Does the 20 circumstance in which the coupling is going across from 21 say a primary to a secondary aspect of a transformer, 22 would that be coupled across for the purpose of drawing 23 DC current? 24 A. Well, again the -- the term that was being 25 construed was "path coupled across." It was not "path</p>

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<p style="text-align: right;">Page 58</p> <p>1 coupled across for the purpose of drawing DC current."</p> <p>2 Q. So if -- if we take in context the claim</p> <p>3 that's saying for the purpose of drawing DC current,</p> <p>4 does that affect how Paragraph 89 applies to the</p> <p>5 claims? For example, in Paragraph 89 you are talking</p> <p>6 about it being inducted through a transformer or</p> <p>7 capacited through a capacitor.</p> <p>8 A. And I'm -- I -- I have lost track of what</p> <p>9 your point was.</p> <p>10 Q. If we are asking about path coupled across</p> <p>11 for the purpose of drawing DC current, does that</p> <p>12 exclude any of the definitions that -- that are</p> <p>13 encompassed in what you cite on Paragraph 89?</p> <p>14 A. Again, if it's -- if -- if it's a variable</p> <p>15 DC, you can couple it through a transformer through a</p> <p>16 capacitor. The variations can still be coupled</p> <p>17 through.</p> <p>18 Q. Okay.</p> <p>19 A. So again, I see -- I just -- I see no</p> <p>20 reason to restrict the definition of path coupled</p> <p>21 across. It's just simply direct connection when it</p> <p>22 specifically says coupled.</p> <p>23 Q. And -- and even if it's for the purpose of</p> <p>24 drawing DC current, you are saying that a coupling</p> <p>25 through the transformer, meaning using inductance,</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Well, when there's change it would -- it</p> <p>2 will get a passthrough. If it's modulated with an AC</p> <p>3 signal, then depending on the value of the capacitor</p> <p>4 and the frequency of the signal, you'll get an output</p> <p>5 or you won't.</p> <p>6 Q. Okay. So in Paragraph 93, we are talk --</p> <p>7 you -- you started talking about the transfer coupling</p> <p>8 that's disclosed in the specifications of the</p> <p>9 patents-in-suit; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And just a matter of -- of conventions,</p> <p>12 understanding, you would -- would you agree with me</p> <p>13 that the specifications of the patents-in-suit all use</p> <p>14 the same figures?</p> <p>15 A. Yes. Yes, sir.</p> <p>16 Q. And they all have the same detailed</p> <p>17 description section?</p> <p>18 A. Mm-hmm.</p> <p>19 Q. I think there might be some modifications</p> <p>20 to the abstract but the summary section is the same;</p> <p>21 correct?</p> <p>22 A. I believe so, yeah.</p> <p>23 Q. And the background of the invention section</p> <p>24 is the same?</p> <p>25 A. Yeah, that -- there -- there's a minor --</p>
<p style="text-align: right;">Page 59</p> <p>1 would still be encompassed?</p> <p>2 A. It could be, yeah.</p> <p>3 Q. Because there's some transient that's going</p> <p>4 to pass; is -- is that correct?</p> <p>5 A. Well, no, if you have a -- a modulated DC,</p> <p>6 for instance, there are variations that will pass</p> <p>7 through a transformer or a capacitor so you -- you</p> <p>8 could couple conceivably the signal that way.</p> <p>9 Q. Because the variations will pass through;</p> <p>10 correct?</p> <p>11 A. Right, yes.</p> <p>12 Q. And then if we go back to what we marked</p> <p>13 previously as Exhibit 9, that page 5 circumstance with</p> <p>14 the capacitor -- sorry, it's on the next page of it.</p> <p>15 A. Oh, okay.</p> <p>16 Q. Yeah.</p> <p>17 That -- that would allow some variation,</p> <p>18 too; correct?</p> <p>19 MR. COHEN: Objection, form.</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. If you had a modulated DC signal, that</p> <p>22 capacitor isn't going to block it entirely, some --</p> <p>23 some of it's going to pass; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Which portion is going to pass through?</p>	<p style="text-align: right;">Page 61</p> <p>1 there might be a minor change or two, a clarification</p> <p>2 somewhere, correction to figure, something like that,</p> <p>3 but I -- they're essentially the same, yeah.</p> <p>4 Q. Okay. In going forward I might just cite</p> <p>5 to one of the patents.</p> <p>6 A. Okay.</p> <p>7 Q. And I'd like to have us just go forward</p> <p>8 and -- and saying that that's going to be applicable to</p> <p>9 the other patents unless for some reason you think it</p> <p>10 wouldn't be applicable.</p> <p>11 A. Okay.</p> <p>12 Q. So, for example, if we're going through the</p> <p>13 detailed description and I cite to the '012 patent, is</p> <p>14 it okay if we understand that that is going to be</p> <p>15 applicable to all four patents-in-suit?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Okay. So let me just put Figure 10</p> <p>18 in front of you, I've just made a photocopy of that</p> <p>19 same Figure 10 from the -- from all the</p> <p>20 patents-in-suit. Let me mark this.</p> <p>21 (Marked Deposition Ex. 10)</p> <p>22 BY MR. BLUESTONE:</p> <p>23 Q. Appropriately, Figure 10 is Exhibit 10.</p> <p>24 MR. BLUESTONE: Here you go.</p> <p>25 MR. COHEN: Thank you.</p>

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<p style="text-align: right;">Page 62</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. So using Figure 10, or I'm sorry,</p> <p>3 Exhibit 10 or Exhibit 5, which is the '012 patent, can</p> <p>4 you explain how the isolation transformers are being</p> <p>5 used with the receiver and transmitter circuits as you</p> <p>6 recite in Paragraph 93 of Exhibit 1?</p> <p>7 A. Okay. So -- so current is -- with respect</p> <p>8 to the remote module on the right, current is being</p> <p>9 sourced from the central modular through resistor 112,</p> <p>10 a 4.7K resistor, and the zener diode and that provides</p> <p>11 a power supply for the board at the top of the zener</p> <p>12 diode. What the current isn't being anticipated on the</p> <p>13 board goes through the zener and into the center tap of</p> <p>14 transformer 124. And in the absence of anything else</p> <p>15 going on it would split equally and go back half</p> <p>16 through resistor 128, half through resistor 129.</p> <p>17 By modulating, with the little</p> <p>18 microprocessor 122, by modulating the outputs at the</p> <p>19 two ends of the primary of the transformer, 124, you</p> <p>20 can cause the voltage to be coupled through and be</p> <p>21 either more on one side or more on the other side so</p> <p>22 you will get more or less of the current in one -- you</p> <p>23 get more in one and less the other, and if you do it</p> <p>24 the other way you'll get more here, less there.</p> <p>25 So you are effectively varying the way you</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. With that reference 118 by that resistor</p> <p>2 there?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So the 15-volt supply is on that</p> <p>5 third wire down from the top; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And that's where the current is sourced</p> <p>8 from that's going to come along that third wire from</p> <p>9 the top?</p> <p>10 A. Yes.</p> <p>11 Q. And then it's going to pass down the 4.7</p> <p>12 kilo ohm resistor 112; correct?</p> <p>13 A. Yes.</p> <p>14 Q. And is that current that's going to be</p> <p>15 sourced modulated in any way?</p> <p>16 MR. COHEN: Objection. Form. Beyond the</p> <p>17 scope of the deposition.</p> <p>18 A. In -- in this example, excuse me, in this</p> <p>19 example here, no, it's just the 15--volt supply.</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. Okay. So the current that's sourced that's</p> <p>22 coming along the third line here on Figure 10 is going</p> <p>23 to be static; correct?</p> <p>24 MR. COHEN: Objection, form.</p> <p>25 A. It's a DC current, yes. Steady DC, yes.</p>
<p style="text-align: right;">Page 63</p> <p>1 split the current -- oops -- between the two -- between</p> <p>2 the two conductors that are going back.</p> <p>3 Q. Okay. So let's start from the beginning of</p> <p>4 that. You were talking about the current being sourced</p> <p>5 from the central module.</p> <p>6 A. Right.</p> <p>7 Q. Which -- which line has that? And I have</p> <p>8 some highlighters, you can use whatever you want to do,</p> <p>9 if you want to highlight one of them or draw on it, I</p> <p>10 will make them available to you.</p> <p>11 A. Well -- well --</p> <p>12 Q. Where is the current being sourced from</p> <p>13 with respect to the lines?</p> <p>14 A. On the far left there's a 15-volt supply in</p> <p>15 resistor 118, and that couples up to the wire right</p> <p>16 next to contact 1, and there's a DC blocking capacitor</p> <p>17 to keep it from going back into the Ethernet equipment,</p> <p>18 and it comes across that wire there through contacts 3</p> <p>19 at the far end and over to the 4.7K resistor.</p> <p>20 Q. And that is a -- a DC current that's coming</p> <p>21 along that line?</p> <p>22 A. From this source, yes.</p> <p>23 Q. And what you are pointing to that source</p> <p>24 is?</p> <p>25 A. The 15-volt supply.</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. But it's a -- it's a static DC current?</p> <p>3 A. Yes. Steady.</p> <p>4 Q. Steady is a better phrase?</p> <p>5 A. What -- whatever you want to say, yeah.</p> <p>6 Q. Well, I -- I want to make sure I get your</p> <p>7 testimony accurate. So if steady is the better word,</p> <p>8 that's fine.</p> <p>9 It's -- it's an unmodulated DC current --</p> <p>10 A. Right.</p> <p>11 Q. -- correct?</p> <p>12 Okay. So that current that's coming along</p> <p>13 in Figure 10 on that third wire and passing down</p> <p>14 through the zener diode and going to the center tap;</p> <p>15 correct?</p> <p>16 A. Right.</p> <p>17 Q. All the way up to the center tap by that</p> <p>18 transformer that's labeled 124, that's all going to be</p> <p>19 a steady DC current; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And then in the absence of what's</p> <p>22 going on below that isolation transformer, namely the</p> <p>23 pick, the 10 -- the 10 kilo ohm resistor and the logic</p> <p>24 gates, in the absence of that doing anything, it's</p> <p>25 going to split that current equally coming back up to</p>

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<p style="text-align: right;">Page 66</p> <p>1 the first and second wires; correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Now, can you explain how the -- that</p> <p>4 pick in the logic is going to actually make it so that</p> <p>5 the current flow on the path leading to the -- the top</p> <p>6 wire may be different from the path leading on the</p> <p>7 second from the top wire?</p> <p>8 A. In general terms, yes.</p> <p>9 Q. Please.</p> <p>10 A. Okay. So the -- the pick is set up so it's</p> <p>11 going to have some output, and these two exclusive OR</p> <p>12 gates are going to ensure that the outputs are opposite</p> <p>13 from each other. So if it's a -- it's a high signal</p> <p>14 coming out of the top exclusive OR gate into the top</p> <p>15 10K resistor, it will be a low signal on the other one.</p> <p>16 So you are either going to drive current through the</p> <p>17 primary of the transformer, either from right to left</p> <p>18 or from left to right, and that will induce a voltage</p> <p>19 in the other side of the transformer and -- which will</p> <p>20 be higher on one side than the other and will affect</p> <p>21 the way the current splits.</p> <p>22 So you can -- so if there's more voltage on</p> <p>23 the one side you can -- you can effectively -- well,</p> <p>24 you basically subtract off voltage from what's coming</p> <p>25 in and so you'll force more current to go one way than</p>	<p style="text-align: right;">Page 68</p> <p>1 across, and this is used to redistribute the current in</p> <p>2 one or the other, but the current on these wires is</p> <p>3 always flowing the same direction.</p> <p>4 Q. And the -- the sum of the two currents</p> <p>5 going to the top two lines is always going to equal the</p> <p>6 sum of the current coming in from the third line;</p> <p>7 right?</p> <p>8 A. Minus the very small amount lost due to</p> <p>9 heating on the board and so on, yeah.</p> <p>10 Q. Okay. What's going to pass across from the</p> <p>11 primary to the secondary portions of the transformer?</p> <p>12 A. I'm not sure I follow you.</p> <p>13 Q. Well, I mean, it seems to me that what's</p> <p>14 going on the -- on the bottom primary side is, is AC</p> <p>15 current that's happening on that bottom half; correct?</p> <p>16 A. Well, I guess that depends on how you look</p> <p>17 at it. It's -- it's current flowing to the right for</p> <p>18 one bit time and then potentially current flowing back</p> <p>19 the other way for another bit time.</p> <p>20 Q. Okay. So does the fact that the claim says</p> <p>21 that the path is for the purpose of drawing DC current,</p> <p>22 does -- does that exclude the bottom half of the</p> <p>23 isolation transformer or is that included in the path?</p> <p>24 MR. COHEN: Objection, form.</p> <p>25 A. Well, as I said to -- you know, to me, the</p>
<p style="text-align: right;">Page 67</p> <p>1 the other, and then when you reverse the output of</p> <p>2 this, it will flip the other way and you will have more</p> <p>3 current back. And as I recall on this example, it's --</p> <p>4 it was roughly a 60/40 split so you'd get 60 percent of</p> <p>5 the current on one, 40 on the other, and then it would</p> <p>6 flip the other way.</p> <p>7 Q. Okay. And for the isolation transformer,</p> <p>8 which -- which side is primary and which side is</p> <p>9 secondary, and make sure I'm referring to this</p> <p>10 properly?</p> <p>11 A. Well, I would call the bottom the primary.</p> <p>12 The --</p> <p>13 Q. And the top is the secondary?</p> <p>14 A. -- top is the secondary, yes.</p> <p>15 Q. Okay. So let's talk about what's going on</p> <p>16 on the -- the bottom half, the primary.</p> <p>17 That actually has current flow that's</p> <p>18 changing directions; correct?</p> <p>19 A. It does.</p> <p>20 Q. Is that portion starting from the bottom</p> <p>21 primary going to the resistors part of the path that's</p> <p>22 coupled across in Claim 1?</p> <p>23 A. I -- I would say the path coupled across is</p> <p>24 down through the first 4.7K through the secondary and</p> <p>25 back out. That's -- that's the path that's directly</p>	<p style="text-align: right;">Page 69</p> <p>1 path is from the third wire down through the zener die,</p> <p>2 the center tap, and back to the other pass. That's the</p> <p>3 path. And this is what you are doing to distribute</p> <p>4 current around on the path. So you are ...</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. So which is the portion of the path that's</p> <p>7 drawing -- that's drawing the DC current?</p> <p>8 A. I -- I -- I think that's what we were just</p> <p>9 talking about, isn't it?</p> <p>10 Q. Well, I mean, you were talking about</p> <p>11 current being supplied. Is that the same thing as --</p> <p>12 as drawing current?</p> <p>13 A. Yeah, you're drawing current off that third</p> <p>14 wire through resistor 112 and returning it on the top</p> <p>15 two wires through resistors 128 and 129.</p> <p>16 Q. The part -- so the parts 128 and 129 are --</p> <p>17 are transmitting current back; correct?</p> <p>18 A. Right, they're returning current back the</p> <p>19 other way, yes.</p> <p>20 Q. So are those -- is that the part of the</p> <p>21 path that's drawing current or is that a different part</p> <p>22 of the path?</p> <p>23 A. Well, if -- if it's a path it's drawing</p> <p>24 current you would presume it's drawing current through</p> <p>25 the path; right? I mean, it's -- certainly in this</p>

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<p style="text-align: right;">Page 70</p> <p>1 case it's drawing current from here over to there so 2 that to me is the path. 3 Q. Okay. Let's -- let's switch gears and 4 we'll come back to this in a little bit if that's okay 5 with you. 6 A. Okay. 7 Q. Can we go back to Claim 1 of the '107 8 patent. 9 A. Okay. 10 Q. It's -- if you want to use it, it's, yeah, 11 page 3 there. It recites, "A piece of Ethernet 12 terminal equipment comprising." 13 The first part is "an Ethernet connector 14 comprising first and second pairs of contacts used to 15 carry Ethernet communication signals." 16 Let's parse that out. "Ethernet connector 17 comprising first and second pairs of contacts," is that 18 structure in the claim? 19 A. Yes. 20 Q. What about "used for" -- "to carry Ethernet 21 communication signals," does that recite structure? 22 A. Yes. 23 Q. Okay. The "at least one path," is that 24 structure? 25 A. Yes.</p>	<p style="text-align: right;">Page 72</p> <p>1 A. It's germane to the claim as a whole. The 2 term I was construing is "path coupled across" and I 3 didn't actually construe it, I said it means what it 4 says. I don't want to -- all I really said is don't 5 change coupled to connected; right? That it's 6 perfectly plain as it is. So I -- I don't think you 7 need to look at the impact on anything else to make 8 that judgment. 9 BY MR. BLUESTONE: 10 Q. Well, what I'm trying to figure out is, 11 there's two different world views for the capacitor, 12 for example, that we discussed in that schematic 13 hypothetical. One world view is that's not coupled 14 across because it's a blocking capacitor. Another 15 world view is that capacitor is still coupled across 16 because it will allow some transient change. Right? 17 MR. COHEN: Objection, form. 18 A. I -- I don't know that I agree with that. 19 I lost my picture. 20 BY MR. BLUESTONE: 21 Q. Sure. 22 A. My picture now. Which -- we're talking 23 about ... 24 Q. What -- will you state which exhibit you 25 are looking at?</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. So when it says, "at least one path coupled 2 across at least one of the contacts of the first pair 3 of contacts and at least one of the contacts in the 4 second pair of contacts," that's -- that's a structural 5 limitation; correct? 6 A. Correct. 7 Q. Now, where it says, "at least one path for 8 the purpose of drawing DC current," is that refining 9 the structure of at least one -- of at least one path 10 coupled across in any way or is it just an intended use 11 for that structure? 12 MR. COHEN: Objection, form. Beyond the 13 scope of the deposition. 14 A. And I'm -- I'm not sure I understand 15 the ... the question. 16 BY MR. BLUESTONE: 17 Q. Well, you have -- you are opining on the 18 meaning of path coupled across. 19 A. Right. 20 Q. And we see that on line 14 it says that 21 "the path is for the purpose of drawing DC current." 22 Would you agree with me that that clause, "the path of 23 the purpose of drawing DC current," is germane to the 24 term the "path coupled across" that you are construing? 25 MR. COHEN: Objection, form.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. This one -- I'm sorry. Exhibit -- 2 Q. It's on the front page. 3 A. Exhibit 9 page 5. 4 Q. Yeah. 5 A. That's the one, the capacitor? 6 Q. Yeah. 7 A. Okay. So if you ask me is that coupled 8 across, the answer is yes. 9 Q. Mm-hmm. And the claim term in the '107 10 doesn't merely just say the path is coupled across. It 11 also says that that path is for the purpose of drawing 12 DC current. 13 A. That's right. 14 Q. Does that factor into the analysis at all 15 of understanding what "path coupled across" means in 16 this claim? 17 A. To me, it -- it factors into understanding 18 the claim as a whole, but this particular term, I think 19 "path coupled across" is very clear, does not need 20 construction, it means what it says, and I don't think 21 it's proper to replace coupled with a word that's more 22 restrictive. 23 Q. Okay. But -- 24 A. That's -- 25 Q. But now the path has become for the purpose</p>

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<p style="text-align: right;">Page 74</p> <p>1 of drawing DC current. Does that impose a structural</p> <p>2 change on what that path coupled across is?</p> <p>3 A. Well, whatever path you couple across had</p> <p>4 better be able to draw a DC current. That's the</p> <p>5 restriction it places on it, I mean.</p> <p>6 Q. Okay. And does that figure with the</p> <p>7 capacitor that you are looking at, I think that's</p> <p>8 page 5; correct?</p> <p>9 A. Yes.</p> <p>10 Q. Does that satisfy that? Can it draw a DC</p> <p>11 current?</p> <p>12 A. Does that satisfy ... a path coupled across</p> <p>13 blah, blah, blah, blah, blah. A -- a path -- at least</p> <p>14 one path for the purpose of drawing DC current, be at</p> <p>15 least one path coupled across to at least one of the</p> <p>16 contacts ... no, I would not expect this to draw DC</p> <p>17 current. But it is coupled across the path.</p> <p>18 Q. Okay.</p> <p>19 A. Or coupled across the contacts. I'm sorry.</p> <p>20 Q. Now, back to the -- the claims. Does that</p> <p>21 mean that for the purpose of drawing DC current is a</p> <p>22 structural limitation on line 14?</p> <p>23 MR. COHEN: Objection, form. Beyond the</p> <p>24 scope of the deposition.</p> <p>25 A. And, I'm -- I'm sorry, you're asking what?</p>	<p style="text-align: right;">Page 76</p> <p>1 configured or designed to operate."</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Do you agree with that statement?</p> <p>5 A. Yes.</p> <p>6 Q. So we have -- you have looked at the words</p> <p>7 "current" and "current flow" as used in the claim;</p> <p>8 correct?</p> <p>9 A. In which claim?</p> <p>10 Q. In Claim 1 of the '107 patent.</p> <p>11 A. Okay. Yes.</p> <p>12 Q. And there is language here that says that</p> <p>13 the path is for the purpose of drawing DC current.</p> <p>14 A. Yes.</p> <p>15 Q. How does that describe how the claimed</p> <p>16 structural elements, namely the at least one path, is</p> <p>17 configured and designed to operate?</p> <p>18 A. It's configured designed to operate so that</p> <p>19 it draws DC current.</p> <p>20 Q. And isn't -- isn't any generic path already</p> <p>21 going to be able to do that?</p> <p>22 MR. COHEN: Objection, form. Beyond the</p> <p>23 scope of the deposition.</p> <p>24 A. Is ... I'm sorry. Will you ask me that</p> <p>25 again?</p>
<p style="text-align: right;">Page 75</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. Does -- for the purpose of drawing DC</p> <p>3 current serve as a structural limitation to the claim?</p> <p>4 MR. COHEN: Same objections.</p> <p>5 A. Well, it is certainly a claim element which</p> <p>6 you would have to meet in order to meet the</p> <p>7 requirements of the claim. So if that -- if that meets</p> <p>8 your definition of structural element, then I guess it</p> <p>9 would be one.</p> <p>10 BY MR. BLUESTONE:</p> <p>11 Q. So I guess what I'm trying to figure out,</p> <p>12 so if you can go to page 64 of your declaration -- I'm</p> <p>13 sorry. Paragraph 64 of your declaration.</p> <p>14 A. Right here. Paragraph 64. Okay.</p> <p>15 Q. You say that, "I also note that current and</p> <p>16 current flow are not claimed structural elements of any</p> <p>17 of these claims."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And you agree with that statement?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And then the next sentence says,</p> <p>23 "Instead, where the terms 'current' and 'current flow'</p> <p>24 are used, they are being used merely to describe how</p> <p>25 the claim's structural elements or apparatus is</p>	<p style="text-align: right;">Page 77</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. So what -- a path could be just a wire;</p> <p>3 correct?</p> <p>4 A. That's -- that's one path.</p> <p>5 Q. Okay. And a wire would be able to draw DC</p> <p>6 current; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And a path with a resistor on it could be</p> <p>9 able to draw a DC current; correct?</p> <p>10 A. Correct.</p> <p>11 Q. Does it matter what the -- what the</p> <p>12 magnitude of the resistor is?</p> <p>13 A. Well, depends how much current you want to</p> <p>14 draw obviously.</p> <p>15 Q. I mean, like if you had like a 500 mega ohm</p> <p>16 resistor, would it still be a path for the purpose of</p> <p>17 drawing DC current?</p> <p>18 A. It --</p> <p>19 MR. COHEN: Objection, form. Beyond the</p> <p>20 scope of the deposition.</p> <p>21 A. Yeah, that -- that seems pretty</p> <p>22 hypothetical. I mean, if -- it depends what you're</p> <p>23 trying to do with that, I mean. In -- in most</p> <p>24 practical cases, 500 mega ohms would be considered an</p> <p>25 open circuit.</p>

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<p style="text-align: right;">Page 78</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. Okay. Okay. So I now have this path and</p> <p>3 I've put in an open switch. Now, is it no longer a</p> <p>4 path for the purpose of drawing DC current?</p> <p>5 MR. COHEN: Objection, form. Beyond the</p> <p>6 scope of the deposition.</p> <p>7 A. If the switch is open, it will not draw DC</p> <p>8 current.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. But is it no longer a path for the purpose</p> <p>11 of drawing DC current?</p> <p>12 MR. COHEN: Same objection.</p> <p>13 A. Well, if you close the switch then it would</p> <p>14 draw DC current. If you open the switch, it won't.</p> <p>15 So ...</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. But when the switch is open it's not a path</p> <p>18 for the purpose of drawing DC current; correct?</p> <p>19 MR. COHEN: Same objections.</p> <p>20 A. It -- it will not draw DC current at that</p> <p>21 time, no.</p> <p>22 BY MR. BLUESTONE:</p> <p>23 Q. Do you have a -- a definition for the</p> <p>24 meaning of "path coupled across" that you would agree</p> <p>25 to?</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. COHEN: Objection, form. Beyond the</p> <p>2 scope of the deposition.</p> <p>3 A. I -- I -- I can't tell you off the top of</p> <p>4 my head. I would have to consider that more carefully.</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. Would the plain meaning of "path coupled</p> <p>7 across" require continuity between the start and the</p> <p>8 end of the path?</p> <p>9 A. Continuity of meaning what?</p> <p>10 Q. Would you have an understanding of what</p> <p>11 continuity is in an electrical engineering sense?</p> <p>12 A. Yes, and typically it would mean if you put</p> <p>13 a -- you have a test light and you stick it here and</p> <p>14 here, if it lights up there's continuity. That's at</p> <p>15 least one way to describe it.</p> <p>16 Would it require. I'm ... certainly many</p> <p>17 of the ways you would couple would have direct</p> <p>18 continuity. Whether there's any that don't, I -- I</p> <p>19 would have to think about that more. But, again, it</p> <p>20 seems to me we're replacing something that's simple --</p> <p>21 or you are proposing to replace something that's simple</p> <p>22 and clear with something that's more complex so I'm --</p> <p>23 I'm not sure I see the purpose in that.</p> <p>24 Q. So if we were in -- sitting in court today</p> <p>25 and -- and the judge asked you is there any other</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes. Path coupled across.</p> <p>2 Q. Which is just the same exact language in</p> <p>3 the claim; correct?</p> <p>4 A. Exactly, yeah. I don't think it needs</p> <p>5 construction. I think it -- it's very clear to one of</p> <p>6 ordinary skill in the art.</p> <p>7 Q. Now, your definition is, in Paragraph 89,</p> <p>8 is talking about permitting energy transfer. Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. Would path -- would path permitting energy</p> <p>12 transfer from one contact to another be an acceptable</p> <p>13 definition of path coupled across?</p> <p>14 MR. COHEN: Objection, form.</p> <p>15 A. Well, it's a -- my opinion, you know, that</p> <p>16 you only need to do claim construction for terms which</p> <p>17 are not clear and I don't think -- I think path coupled</p> <p>18 across is perfectly clear so I -- I don't see any need</p> <p>19 to come up with any alternative language to describe</p> <p>20 it.</p> <p>21 BY MR. BLUESTONE:</p> <p>22 Q. I understand that you don't think that</p> <p>23 there's a need for it. My question is:</p> <p>24 Is there anything wrong with path</p> <p>25 permitting energy transfer from one contact to another?</p>	<p style="text-align: right;">Page 81</p> <p>1 meaning you can give me other than path coupled across,</p> <p>2 would the answer be no, you just -- you can't give</p> <p>3 anything else?</p> <p>4 MR. COHEN: Objection, form.</p> <p>5 A. I don't know if -- I've never actually had</p> <p>6 a judge actually ask me anything. I -- you know.</p> <p>7 BY MR. BLUESTONE:</p> <p>8 Q. Well, in -- in my hypothetical he has.</p> <p>9 A. Yeah.</p> <p>10 MR. COHEN: Same objection.</p> <p>11 A. And -- and what did the judge ask me?</p> <p>12 BY MR. BLUESTONE:</p> <p>13 Q. You can't use the phrase "path coupled</p> <p>14 across," give me another collection of words that</p> <p>15 describes what "path coupled across" means. Can -- can</p> <p>16 that be done?</p> <p>17 A. Did he threaten me with contempt of court</p> <p>18 if I don't answer?</p> <p>19 Q. Your hypothetical is getting more --</p> <p>20 more -- more dangerous for you, but let's say yes.</p> <p>21 A. Yes, okay.</p> <p>22 MR. COHEN: And same objection.</p> <p>23 A. Path coupled across, I would say it's a --</p> <p>24 it's a -- it's a path coupled from one contact to the</p> <p>25 other contact.</p>

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<p style="text-align: right;">Page 82</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. And if there's discontinuity in the path,</p> <p>3 does that eliminate coupling?</p> <p>4 MR. COHEN: Objection, form.</p> <p>5 A. Well, again, coupling to me means that you</p> <p>6 can transmit energy or signals from the one to the</p> <p>7 other. So it would depend on what kind of</p> <p>8 discontinuity you are talking about.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. So in Paragraphs 86 through 93 of your</p> <p>11 declaration, you are simply criticizing defendants'</p> <p>12 proposal. You are not offering any construction of</p> <p>13 your own; correct?</p> <p>14 A. Right, it's my opinion it does not need</p> <p>15 construction.</p> <p>16 Q. What I'm trying to figure out here is how a</p> <p>17 jury can reconcile "path coupled across" having no</p> <p>18 definition with all these examples in Paragraph 89,</p> <p>19 which I'm not sure which apply to. That's not a</p> <p>20 question obviously, I'm just trying to frame what I'm</p> <p>21 getting at here with you.</p> <p>22 "Path coupled across," you disagree with</p> <p>23 the word "connection," correct?</p> <p>24 A. Yes, I -- I think that's a restriction that</p> <p>25 is not present in the claim.</p>	<p style="text-align: right;">Page 84</p> <p>1 you can give to the word "path," what a "path" is?</p> <p>2 A. A path is a -- a route, a means to get from</p> <p>3 one contact to the other.</p> <p>4 Q. Okay. And plain meaning of what the path</p> <p>5 now being coupled means, how does coupled</p> <p>6 modify "path"?</p> <p>7 A. Means that that path is between those two</p> <p>8 contacts. There's a way to get from this contact to</p> <p>9 that contact through this path.</p> <p>10 Q. And "across," is that now explaining what</p> <p>11 the beginning and endpoints are of that path?</p> <p>12 A. Right, coupled across those two contacts</p> <p>13 means from this one to that one, there's a -- a route</p> <p>14 or means by which you can get from there to there.</p> <p>15 Q. Now, we're not talking about me like</p> <p>16 walking through sand in this context, right, we're not</p> <p>17 talking about a path literally of someone walking</p> <p>18 somewhere in the context of this claim; right?</p> <p>19 A. No.</p> <p>20 Q. We're talking about a transmission of</p> <p>21 signals; correct?</p> <p>22 A. Right.</p> <p>23 Q. Is there anything wrong with the part of</p> <p>24 the defendant's construction with you if you use the</p> <p>25 word "electrical" that causes a problem?</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Okay. And then in Paragraph 90 you say,</p> <p>2 "The connection such as through a wire," correct?</p> <p>3 A. Correct.</p> <p>4 Q. Your point being in Paragraph 90,</p> <p>5 connection, if it means just a wire, is way too narrow;</p> <p>6 correct?</p> <p>7 A. I didn't say way too narrow. I said it's</p> <p>8 more restrictive than the general concept of coupling.</p> <p>9 Q. Okay. And coupling can be including</p> <p>10 elements contained in between the contacts; right?</p> <p>11 MR. COHEN: Objection, form.</p> <p>12 A. I didn't follow that.</p> <p>13 BY MR. BLUESTONE:</p> <p>14 Q. Well, you were taking issue also with</p> <p>15 direct connection.</p> <p>16 A. Yes.</p> <p>17 Q. If connection allows for intermediate</p> <p>18 elements between the -- the requisite context of the</p> <p>19 claims, is the word "connection" okay?</p> <p>20 MR. COHEN: Objection, form.</p> <p>21 A. Then we would need a construction</p> <p>22 for "connection." I mean, I -- I don't -- I don't see</p> <p>23 that we are simplifying things here at all.</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. Okay. Well, is there a plain meaning that</p>	<p style="text-align: right;">Page 85</p> <p>1 MR. COHEN: Objection, form.</p> <p>2 A. Well, that would -- I -- I -- I don't know.</p> <p>3 That's what concerns me about it.</p> <p>4 BY MR. BLUESTONE:</p> <p>5 Q. Okay. Can you explain what actually has to</p> <p>6 be able to get from point A to point B for it to be a</p> <p>7 path coupled across in the context of this claim?</p> <p>8 MR. COHEN: Objection, form. Beyond the</p> <p>9 scope of the deposition.</p> <p>10 A. To me, in order to be coupled from A to B,</p> <p>11 you have to have a means to get energy from one place</p> <p>12 to the other.</p> <p>13 BY MR. BLUESTONE:</p> <p>14 Q. So energy is to --</p> <p>15 A. That's what coupled means --</p> <p>16 Q. I'm sorry.</p> <p>17 A. That's what coupled means to me is that you</p> <p>18 can -- you can transfer energy from one point to the</p> <p>19 other and they're coupled.</p> <p>20 Q. So it doesn't necessarily have to be an</p> <p>21 electrical mechanism for getting that energy from A to</p> <p>22 B?</p> <p>23 A. It just, in terms of coupling it -- it</p> <p>24 could be magnetic, it could be who knows. But it --</p> <p>25 it -- it's not restricted to electrons flowing in a</p>

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<p style="text-align: right;">Page 86</p> <p>1 wire between one and the other.</p> <p>2 Q. So it could be the circumstance by which</p> <p>3 you're going across an isolation transformer using the</p> <p>4 magnetic inductance to have the energy flow, that could</p> <p>5 be encompassed; correct?</p> <p>6 A. It could be, yes.</p> <p>7 Q. Okay. And is it -- okay. So in that same</p> <p>8 circumstance, if we're talking about a modulated DC</p> <p>9 signal, there is still going to be some energy</p> <p>10 transferred across that transformer because it's the</p> <p>11 variation that's going to pass through; correct?</p> <p>12 A. If you're going across rather than just</p> <p>13 through a winding, yeah.</p> <p>14 Q. And that circumstance under your</p> <p>15 interpretation of coupling -- let me start over the</p> <p>16 question. Sorry.</p> <p>17 Does this path coupled across require that</p> <p>18 on point A, or con -- contact 1, that the signal looks</p> <p>19 identical in -- at the other end at the other contact?</p> <p>20 MR. COHEN: Objection, form. Beyond the</p> <p>21 scope of the deposition.</p> <p>22 A. The -- can you do that one more time?</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. So ... it seems like there's no problem</p> <p>25 with path being coupled across as it relates to</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Well, you will -- you will see that</p> <p>2 transition, but probably be a lot of the high</p> <p>3 frequencies attenuate so it will look more -- more</p> <p>4 sine-wavish or rounded off at the same rate on -- on</p> <p>5 the other side and which could still be a DC signal if</p> <p>6 you have a DC bias on that side of the transformer.</p> <p>7 So ...</p> <p>8 Q. Okay. Okay. So you can -- okay. I think</p> <p>9 I'm -- I think I'm getting what you're saying. I'm</p> <p>10 sorry that I keep belaboring this point. I just want</p> <p>11 to make sure technically I'm understanding your point</p> <p>12 here.</p> <p>13 A. Okay.</p> <p>14 Q. The transformer passing through the</p> <p>15 modulated DC signal can still be a path coupled across</p> <p>16 even though the signal at the primary side doesn't look</p> <p>17 identical to the signal at the secondary side.</p> <p>18 A. Right, I mean, if -- if you -- if you</p> <p>19 couple across a resistor for instance it's going to be</p> <p>20 attenuated here with respect to there, so I mean, yeah,</p> <p>21 it's -- it's not uncommon for signals to be changed.</p> <p>22 There could be noise introduced, there could be</p> <p>23 attenuation.</p> <p>24 Q. Okay. So between permitting the signal to</p> <p>25 transfer from point A to B and permitting energy</p>
<p style="text-align: right;">Page 87</p> <p>1 permitting energy to transfer from one contact to the</p> <p>2 other; correct?</p> <p>3 MR. COHEN: Objection, form.</p> <p>4 A. Right, that's what coupled means to me.</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. Okay. My question for you is, does it</p> <p>7 preclude any change in the form of the signal being</p> <p>8 sent from one contact to the other?</p> <p>9 MR. COHEN: Objection, form.</p> <p>10 A. And by "form," you mean what?</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. So let's take a hypothetical. Let's use</p> <p>13 that transformer we were talking about.</p> <p>14 A. Okay.</p> <p>15 Q. We can have a transformer and we're sending</p> <p>16 across a signal that is a step function going up and</p> <p>17 down, up and down. So it's going, let's say, you know,</p> <p>18 it start -- it's -- it's at 6 and the bottom is at 4.</p> <p>19 A. Okay.</p> <p>20 Q. And it keeps doing a regular periodic up</p> <p>21 and down at 6 and 4, and now I'm going across the</p> <p>22 transformer, not through it. What's going to show up</p> <p>23 from the primary side to the secondary side? So</p> <p>24 if applied to the primary is that hypothetical I gave</p> <p>25 you, what's going to show up on the secondary side?</p>	<p style="text-align: right;">Page 89</p> <p>1 transfer from one contact to the other, you prefer</p> <p>2 energy transfer; that's the language you used.</p> <p>3 A. It is, yes.</p> <p>4 Q. Okay. And there are -- and there are</p> <p>5 circumstances in which, even if you're sending DC</p> <p>6 current and it's for DC current, that you are still</p> <p>7 going to have a coupling over an isolation transformer?</p> <p>8 A. You could. I mean, it's possible.</p> <p>9 Q. Okay. So let's go back to -- to Figure 10.</p> <p>10 Which was Exhibit 10.</p> <p>11 The portion that's the bottom half, the</p> <p>12 primary side of the isolation transformer 124 in the</p> <p>13 figure on the bottom half; do you see that?</p> <p>14 A. Mm-hmm. Yes.</p> <p>15 Q. That has current going one direction and</p> <p>16 then it changes and has current going the other</p> <p>17 direction; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And that is causing the two wires that are</p> <p>20 connecting the -- the -- the top wire and the second</p> <p>21 wire to change with respect to each other; correct?</p> <p>22 A. It's -- it's causing current to be placed</p> <p>23 more on one than the other or vice versa, yes.</p> <p>24 Q. Okay. So what is getting sent over from</p> <p>25 the -- the primary part of the transformer to the top</p>

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<p style="text-align: right;">Page 90</p> <p>1 half of the transformer 124 in Figure 10? What</p> <p>2 actually is passing over, is my question.</p> <p>3 A. Magnetic energy is passing over.</p> <p>4 Q. And how does it create a -- a differential</p> <p>5 in -- in the currents?</p> <p>6 A. Because it induces a voltage in the</p> <p>7 windings on the other side which will affect how the</p> <p>8 current splits between the -- the two halves.</p> <p>9 Q. Okay. But the -- the portion that you</p> <p>10 would say is the path coupled across for the purpose of</p> <p>11 drawing DC current wouldn't include this bottom part of</p> <p>12 the -- the transformer, that whole path; correct?</p> <p>13 MR. COHEN: Objection, form. Beyond the</p> <p>14 scope of the deposition.</p> <p>15 A. Yeah, as I -- I think I've stated before,</p> <p>16 the -- the DC path is through resistor 112 and the</p> <p>17 secondary, the transformer and back through resistors</p> <p>18 128 and 129.</p> <p>19 BY MR. BLUESTONE:</p> <p>20 Q. Okay. Let's go to Figure 8, which I will</p> <p>21 mark as Exhibit 11.</p> <p>22 (Marked Deposition Ex. 11)</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. There you go, sir.</p> <p>25 MR. BLUESTONE: Here you go, Justin.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Right, minus any losses on the board, yeah.</p> <p>2 Q. Through heat or something you explained?</p> <p>3 A. Right.</p> <p>4 Q. Sorry. Please go ahead.</p> <p>5 A. Okay. And then the modulation here is by</p> <p>6 the two outputs RA1 and RA2 of the pick chip. Which if</p> <p>7 you -- there is a minor error in this figure that that</p> <p>8 line labeled 110 is actually a little capacitor. It</p> <p>9 says 3700 picofarad so it's a very small capacitor. I</p> <p>10 guess it didn't show up on the picture.</p> <p>11 Q. I see that.</p> <p>12 A. Okay. So by -- by moving these lines one</p> <p>13 low, one high, again you -- you can shunt some of the</p> <p>14 current off of those lines and -- and recycle it</p> <p>15 around, which again effectively mod -- makes there be</p> <p>16 more current on one than the other and then you go</p> <p>17 back.</p> <p>18 Q. And Figure 8 is not showing a modulated DC</p> <p>19 signal coming across the third wire from the top</p> <p>20 passing through resistor 112; correct?</p> <p>21 A. Correct.</p> <p>22 Q. So between -- in Exhibit 10 Figure 8 and</p> <p>23 Exhibit 11 -- I'm sorry. I mean, Figure 10 of</p> <p>24 Exhibit 10 and Figure 8 of Exhibit 11, both of these</p> <p>25 examples have the current coming on the third wire from</p>
<p style="text-align: right;">Page 91</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. Can you explain how the path is sourcing</p> <p>3 current in Figure 8?</p> <p>4 A. Again, in general terms.</p> <p>5 Q. Go ahead.</p> <p>6 A. Okay. Once -- once again, the current is</p> <p>7 sourced through resistor 112 at the top. And goes</p> <p>8 through the zener diode, and you can see there's a</p> <p>9 little bit tapped off there that runs into VCC on</p> <p>10 the -- on the pick chip, but most of it comes through</p> <p>11 the zener diode and is returned through the two 10K</p> <p>12 resistors, 100 and 109 on the right to the two paths.</p> <p>13 Q. Okay. And are those paths that are</p> <p>14 including resistors 100 and 109 operating the same</p> <p>15 manner as Figure 10, namely they will have different</p> <p>16 amounts of current?</p> <p>17 A. Yeah, again, if you didn't do anything</p> <p>18 else, they'd have the same current to within tolerance</p> <p>19 of how active resistance was.</p> <p>20 Q. Same as -- same as what?</p> <p>21 A. They would have the same as each other and</p> <p>22 split 50/50 if you didn't do anything else to it.</p> <p>23 Q. Okay. And they would add up to be the</p> <p>24 amount that's coming in on that third wire and then</p> <p>25 passing through resistor 112?</p>	<p style="text-align: right;">Page 93</p> <p>1 the top and that current is a DC current that's static,</p> <p>2 that's steady I believe you used the word; correct?</p> <p>3 A. Yes. Not say there isn't noise on it or</p> <p>4 whatever, but yeah.</p> <p>5 Q. Okay. But it -- it's an unmodulated DC</p> <p>6 current in your example.</p> <p>7 A. Unmodulated DC current, yes.</p> <p>8 (Marked Deposition Ex. 12)</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. All right. I will mark as Exhibit 12</p> <p>11 Figure 18.</p> <p>12 And can you generally explain what's going</p> <p>13 on in Figure 18?</p> <p>14 A. Yeah, this looks like the central module</p> <p>15 end of the ...</p> <p>16 Q. Yes, and it says "Central Module" at the --</p> <p>17 at the top of that; correct?</p> <p>18 A. Right, yes.</p> <p>19 Q. And then do you also see the part under --</p> <p>20 A. And then the remote module is on the far</p> <p>21 side, the next stick, yeah.</p> <p>22 Q. Right. So the remote module is the items</p> <p>23 that are in this -- well, maybe -- sorry, I don't want</p> <p>24 to testify for you.</p> <p>25 Can you tell me what the -- the remote</p>

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<p style="text-align: right;">Page 94</p> <p>1 module encompasses in Exhibit 12?</p> <p>2 A. Okay. It's a -- it's a similar arrangement</p> <p>3 to what we had before. You have -- it's physically</p> <p>4 configured a little bit different on the so-called next</p> <p>5 stick arrangement. But again you have a little</p> <p>6 microprocessor there, you have current source on the</p> <p>7 third line from the top, coming across through a 4.7K</p> <p>8 resistor and zener diode and -- and return back through</p> <p>9 this network of resistors up here. And again by -- by</p> <p>10 modifying the GP0 and GP1 signals on the pick micro</p> <p>11 control, you can change the impedance in the return</p> <p>12 path so that more current goes on one side than the</p> <p>13 other.</p> <p>14 Q. Okay. Let's go back to Claim 1 of the '107</p> <p>15 patent. And I want to talk about the portions of the</p> <p>16 claim that start on Line 18 after "the piece of</p> <p>17 Ethernet terminal equipment" specifically where it</p> <p>18 starts saying "to draw." When you've had a chance to</p> <p>19 review the claim, let me know.</p> <p>20 A. Okay.</p> <p>21 Q. Thank you.</p> <p>22 You state in page 16 of Exhibit 1 that "the</p> <p>23 use of the infinitive 'to' should be interpreted to</p> <p>24 mean 'configured to' or 'design to' perform the</p> <p>25 function recited in the claim."</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Right.</p> <p>2 Q. Okay. What's the next function?</p> <p>3 A. That the different magnitudes of DC current</p> <p>4 flow result from at least one condition applied to at</p> <p>5 least one of the contacts of the first and second</p> <p>6 pairs.</p> <p>7 Q. And that -- is it safe to say that's a</p> <p>8 second function?</p> <p>9 A. Yes.</p> <p>10 MR. COHEN: Objection, form.</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. And then is the remainder after the</p> <p>13 wherein, the word "wherein," the third function?</p> <p>14 A. Yes.</p> <p>15 Q. So we have a third function of at least one</p> <p>16 of the magnitudes of DC current flow to convey</p> <p>17 information about the piece of Ethernet terminal</p> <p>18 equipment; is that correct?</p> <p>19 A. Yes.</p> <p>20 Q. So is it fair to say that Claim 1 has</p> <p>21 certain limitations that are structural and certain</p> <p>22 limitations that are -- are functional limitations?</p> <p>23 MR. COHEN: Objection, form.</p> <p>24 A. You know, I -- I -- I haven't really</p> <p>25 thought of it in that way. I think of them as claim</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Page 16 or paragraph?</p> <p>2 Q. I'm sorry. Paragraph 16.</p> <p>3 A. Okay.</p> <p>4 Q. Can you go through, starting at Line 18,</p> <p>5 what the functions recited in the claim are for the</p> <p>6 Ethernet terminal equipment, please?</p> <p>7 A. Yes. The piece of Ethernet terminal</p> <p>8 equipment is designed or configured to draw different</p> <p>9 magnitudes of DC current meeting at least one path.</p> <p>10 And is designed and configured such that the different</p> <p>11 magnitudes of DC current flow result from at least one</p> <p>12 condition applied to at least one of the contacts, and</p> <p>13 it is further designed and configured such that the</p> <p>14 magnitudes of the DC current flow convey information</p> <p>15 about the piece of terminal equipment.</p> <p>16 Q. Okay. So can you enumerate out what the</p> <p>17 different functions are recited in the claim for</p> <p>18 Ethernet terminal equipment, what the functional</p> <p>19 limitations are?</p> <p>20 A. What the functional limitations are ...</p> <p>21 Well, it's -- it's designed or configured</p> <p>22 to have a bunch of functions, including drawing</p> <p>23 different magnitudes of DC current via the path -- via</p> <p>24 at least one path.</p> <p>25 Q. And that's one function.</p>	<p style="text-align: right;">Page 97</p> <p>1 elements that have to be present.</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. How would I know if that claim element is</p> <p>4 present, for example, to draw two different magnitudes</p> <p>5 of DC current flow via the at least one path, that</p> <p>6 first function?</p> <p>7 MR. COHEN: Objection, form. Beyond the</p> <p>8 scope of the deposition.</p> <p>9 A. And which -- which -- which one -- oh.</p> <p>10 Line 15? No.</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. I'm asking you about to draw different</p> <p>13 magnitudes of DC current flow via the at least one path</p> <p>14 which is subsumed in that section inquired about the</p> <p>15 use of the infinitive "to."</p> <p>16 MR. COHEN: Same objections.</p> <p>17 A. Okay. Well, there -- there's a couple ways</p> <p>18 that you would verify that, whether it is configured,</p> <p>19 designed and configured to do that, first looking at</p> <p>20 the product documentation, design documentation, so you</p> <p>21 could see whether that -- whether it is so designed to</p> <p>22 do, and second, you could -- you could test it and see</p> <p>23 if it does it.</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. Okay. And by configure to or design to</p>

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<p style="text-align: right;">Page 98</p> <p>1 perform the function recited in the claim, does that</p> <p>2 include any intent of the designer, any requirement of</p> <p>3 what they were trying to accomplish?</p> <p>4 MR. COHEN: Objection, form. Beyond the</p> <p>5 scope of the deposition.</p> <p>6 A. I -- can -- can -- can you rephrase that</p> <p>7 or -- or repeat it or something? I ...</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. In Paragraph 16 of -- of your declaration,</p> <p>10 what this deposition is about, you use the language</p> <p>11 that -- that the infinitive should be interpreted as</p> <p>12 configured to or designed to perform the function</p> <p>13 recited in the claim.</p> <p>14 A. Mm-hmm.</p> <p>15 Q. And what I'm trying to understand is what</p> <p>16 you mean by "configured to" or "designed to."</p> <p>17 My question is, your use of the word</p> <p>18 configure to or design to, does that require me to look</p> <p>19 into the intent of the person who designed the</p> <p>20 equipment?</p> <p>21 MR. COHEN: Same objections.</p> <p>22 A. Well, I'm -- I'm not a psychiatrist, I'm</p> <p>23 not going to psychoanalyze someone and see what they</p> <p>24 intended. I -- I think you would look at the equipment</p> <p>25 and the way it is designed to work, and typically a</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yeah, that, I -- I don't know, but I -- the</p> <p>2 claims are written such that they talk about the way</p> <p>3 the equipment is designed and configured. And which</p> <p>4 could, of course, be verified by turning it on and</p> <p>5 testing it, as well as by analyzing the documentation</p> <p>6 that supports it.</p> <p>7 BY MR. BLUESTONE:</p> <p>8 Q. Well, I'm not asking you to do an</p> <p>9 infringement analysis obviously. We're -- we're</p> <p>10 talking about your opinions and what the plain meaning</p> <p>11 of the -- the claim terms mean, just to be clear.</p> <p>12 A. Right.</p> <p>13 Q. So I agree with you earlier, that's --</p> <p>14 that's a discussion for another day.</p> <p>15 A. It just -- it just sounds to me like we</p> <p>16 keep going there, that's why I keep answering that.</p> <p>17 Q. Well, no, that's -- I understand and --</p> <p>18 and hopefully --</p> <p>19 A. If I've misinterpreted, please correct me.</p> <p>20 Q. Yeah, and I'm hopefully trying to give</p> <p>21 guidance and saying I don't -- I don't want to know</p> <p>22 what your infringement analysis is going to be weeks</p> <p>23 down the road. I'm trying to understand what you mean</p> <p>24 by the statements in your -- in your declaration.</p> <p>25 So ...</p>
<p style="text-align: right;">Page 99</p> <p>1 piece of communication equipment will have</p> <p>2 documentation telling you how it works, there will be</p> <p>3 functional specs, they'll say we're compatible with</p> <p>4 this, this, and this document and so on, so that you</p> <p>5 know what you can use it with.</p> <p>6 So that -- that's the kind of material, I'm</p> <p>7 not -- I'm not talking about, you know, putting the guy</p> <p>8 who designed it under lights and interrogating him all</p> <p>9 day. But I ...</p> <p>10 BY MR. BLUESTONE:</p> <p>11 Q. So let's keep on this first function. To</p> <p>12 draw different magnitudes of DC current flow via the at</p> <p>13 least one path.</p> <p>14 It's your opinion that it doesn't</p> <p>15 require -- the claim does not require it ever to</p> <p>16 actually draw different magnitudes of DC current flow</p> <p>17 via the least one path. It doesn't need to actually do</p> <p>18 that, is your opinion; correct?</p> <p>19 A. It needs to be designed or configured to so</p> <p>20 that it is able to, but does not have to have done it</p> <p>21 yet.</p> <p>22 Q. You said "yet." Does it have to do it</p> <p>23 ever?</p> <p>24 MR. COHEN: Objection, form. Beyond the</p> <p>25 scope of the deposition.</p>	<p style="text-align: right;">Page 101</p> <p>1 A. Right.</p> <p>2 Q. We -- we have this function here to draw</p> <p>3 different magnitudes of DC current flow via the least</p> <p>4 one path.</p> <p>5 A. Yeah.</p> <p>6 Q. And we have a dispute as to the meaning of</p> <p>7 the use of the word "infinitive."</p> <p>8 A. Right.</p> <p>9 Q. Is it your opinion that Claim 1 of the '107</p> <p>10 patent does not require the piece of Ethernet terminal</p> <p>11 equipment to ever draw different magnitudes of DC</p> <p>12 current flow via the at least one path?</p> <p>13 MR. COHEN: Objection, form. Beyond the</p> <p>14 scope of the deposition.</p> <p>15 A. Again, that -- that is not what I was</p> <p>16 opining on here, but it -- it's my opinion that the</p> <p>17 claims are directed to the way it is designed and</p> <p>18 configured and does not require to be in actual</p> <p>19 operation at any particular time.</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. Does it have to be in any -- in actual</p> <p>22 operation ever?</p> <p>23 MR. COHEN: Same objection.</p> <p>24 A. I -- I don't know. I mean, "ever" is a</p> <p>25 long time. But it -- it needs to be capable of --</p>

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<p style="text-align: right;">Page 102</p> <p>1 designed and configured to be capable of doing what's</p> <p>2 spelled out here is the way I look at it.</p> <p>3 BY MR. BLUESTONE:</p> <p>4 Q. Configured to, or capable to? Is there a</p> <p>5 difference?</p> <p>6 A. I don't know. I'll stick with design and</p> <p>7 configured if it's -- I mean, having designed and</p> <p>8 configured equipment myself, I know what I mean for it</p> <p>9 to be able to do when I -- when I'm finished with the</p> <p>10 design. So ...</p> <p>11 Q. Paragraph 14 of your report says that "Our</p> <p>12 construction is incorrect 'because it would be</p> <p>13 improperly transforming apparatus claims into hybrid</p> <p>14 apparatus method claims.'"</p> <p>15 What is your basis for that statement?</p> <p>16 A. It -- it looks like you're trying to say</p> <p>17 that these are steps that have to be performed was the</p> <p>18 way I interpreted your ...</p> <p>19 Q. And why is that improper?</p> <p>20 A. Because that sounds to me like a method</p> <p>21 claim. A method claim gives you steps to perform and</p> <p>22 apparatus claim describes apparatus.</p> <p>23 Q. So does that mean that you disagree that</p> <p>24 the functional limitations have to -- that you do not</p> <p>25 believe that the functional limitations have to be</p>	<p style="text-align: right;">Page 104</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. You've given your under -- you are here to</p> <p>3 talk about your understanding of the meaning path</p> <p>4 coupled across as you recited in your report; right?</p> <p>5 A. Yes.</p> <p>6 Q. I'm sorry. Your declaration I should say.</p> <p>7 Right?</p> <p>8 A. Right.</p> <p>9 Q. We agree that path coupled across is a</p> <p>10 structural limitation; correct?</p> <p>11 A. Right.</p> <p>12 Q. How do I know, how would one read path</p> <p>13 coupled across to be anything other than the path</p> <p>14 coupled across? Are you saying that path coupled</p> <p>15 across could also mean the path is configured to be</p> <p>16 coupled across?</p> <p>17 MR. COHEN: Objection, form.</p> <p>18 A. Well, again, I -- I think we're getting</p> <p>19 well outside what I'm saying here. Path coupled</p> <p>20 across, we -- we -- well, actually I said it didn't</p> <p>21 need any construction. But path coupled across means</p> <p>22 what it says.</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. So you have no opinion that path coupled</p> <p>25 across allows for the path to be merely configured to</p>
<p style="text-align: right;">Page 103</p> <p>1 performed?</p> <p>2 MR. COHEN: Objection, form.</p> <p>3 A. Well, performed when I guess is your --</p> <p>4 again, it's my opinion that if it is designed and</p> <p>5 configured to meet this, then it meets it.</p> <p>6 BY MR. BLUESTONE:</p> <p>7 Q. Okay. So we have a path that's already</p> <p>8 structure in the claim. We agree to that; correct? A</p> <p>9 path coupled across is structure.</p> <p>10 A. Okay.</p> <p>11 Q. Do -- well, do we agree with that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And path coupled across means the</p> <p>14 path is actually coupled across; correct?</p> <p>15 A. Well, at least one path for the purpose of</p> <p>16 drawing DC current. Right. So it -- and for that</p> <p>17 purpose it will be coupled across, yes.</p> <p>18 Q. I'm just asking about the coupled across</p> <p>19 part of it. Path coupled across, that is structure the</p> <p>20 path has to be actually coupled across; correct?</p> <p>21 MR. COHEN: Objection, form. Beyond the</p> <p>22 scope of the deposition.</p> <p>23 A. I don't -- I don't believe so. That's --</p> <p>24 that's -- that's not an opinion that I have made and</p> <p>25 I'm not prepared to make it today.</p>	<p style="text-align: right;">Page 105</p> <p>1 or designed to being coupled across; correct?</p> <p>2 MR. COHEN: Objection, form.</p> <p>3 A. Again, I have not stated an opinion on that</p> <p>4 as far as I know.</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. Sitting here today, you have no reason to</p> <p>7 tell me that path coupled across should be interpreted</p> <p>8 as meaning path configured to be coupled across;</p> <p>9 correct?</p> <p>10 MR. COHEN: Objection, form.</p> <p>11 A. I -- I really can't answer that right now.</p> <p>12 BY MR. BLUESTONE:</p> <p>13 Q. You can't answer whether you have an</p> <p>14 opinion to that effect or not?</p> <p>15 A. I -- I don't have an opinion. I'm sorry.</p> <p>16 Q. Okay. So your declaration nowhere says</p> <p>17 that path coupled across should be something that</p> <p>18 doesn't actually have to be present in the claim; that</p> <p>19 statement is not in your declaration; correct?</p> <p>20 A. Right, I don't think that was at issue.</p> <p>21 The issue was what path coupled across means.</p> <p>22 Q. Okay. And you're not prepared to go and</p> <p>23 tell me that I should read in additional words beyond</p> <p>24 what path coupled across's plain meaning is; correct?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 106</p> <p>1 Q. Okay. Now, to the first functional 2 limitation to draw different magnitudes of DC current 3 flow. Do you see that? 4 A. Yes. 5 Q. Now let's talk about for the purpose of 6 drawing DC current in the path coupled across. 7 A. Okay. 8 Q. How is there any structural difference 9 between a path that's for the purpose of drawing DC 10 current and having the functional ability to draw 11 different magnitudes of DC current flow via that path? 12 MR. COHEN: Objection, form. Beyond the 13 scope of the deposition. 14 A. Again, I -- I'm really not sure what you're 15 getting at there. 16 BY MR. BLUESTONE: 17 Q. We have portions that we agree are 18 structural limitations, and then we have portions to 19 which you've said they are functional limitations; 20 correct? 21 A. Correct. 22 MR. COHEN: Objection, form. 23 BY MR. BLUESTONE: 24 Q. And for those functional limitations you 25 have opined that all those functional limitations</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. How is the structure affected by the 2 ability to draw different magnitudes of DC current flow 3 via the path from what is already present in the 4 requirement that the path is for the purpose of drawing 5 DC current? 6 MR. COHEN: Objection, form. Beyond the 7 scope of the deposition. 8 A. Yeah, again, I -- I just -- I -- I really 9 don't know what you are getting at there. 10 BY MR. BLUESTONE: 11 Q. If I have a path that's for the purpose of 12 drawing DC current, isn't that path already capable of 13 drawing different magnitudes of DC current flow? 14 A. Could be. I don't -- I don't -- I don't 15 know that it would necessarily have to be. But ... 16 Q. How -- how could a path for the purpose of 17 drawing DC current not also be able to do that with 18 different magnitudes of DC current flow? 19 MR. COHEN: Objection, form. Beyond the 20 scope of the deposition. 21 A. How -- how could it not be? I mean, if -- 22 you can design constant current sources and so on. 23 I -- I'm not sure really what -- what actual issue you 24 are getting at, to be honest with you. 25 MR. BLUESTONE: I think we have to take a</p>
<p style="text-align: right;">Page 107</p> <p>1 should be interpreted as reading in the 2 words "configured to" or "design to," notwithstanding 3 the fact that those words are not present in the claim 4 itself; correct? 5 MR. COHEN: Objection, form. 6 A. Well, I think my -- my opinions are written 7 down there. I ... 8 BY MR. BLUESTONE: 9 Q. Is it your opinion that we should read in 10 the words configure to or design to before "draw," on 11 Line 18 of Claim 1 of '107? 12 A. Yes, I believe I stated that in here, that 13 to me that means is designed or configured to draw 14 different magnitudes. 15 Q. Okay. So under your construction, the 16 piece of Ethernet terminal equipment to draw different 17 magnitudes of DC current flow via the one -- at least 18 one path should be read as to state, "Ethernet terminal 19 equipment configured to or designed to draw different 20 magnitudes of DC current via the at least one path"; is 21 that correct? 22 A. I believe so. 23 Q. Okay. 24 A. It's paraphrasing slightly but I think it's 25 right.</p>	<p style="text-align: right;">Page 109</p> <p>1 break to change the tape. 2 MR. COHEN: Probably a good time to break 3 for lunch. 4 VIDEOGRAPHER: We are off the record at 5 11:48 a.m. 6 (Break from 11:48 a.m. until 12:47 p.m.) 7 VIDEOGRAPHER: Stand by. 8 We are back on the record at 12:47 p.m. 9 This is file 3. 10 BY MR. BLUESTONE: 11 Q. Good afternoon, Mr. Baxter. 12 A. Good afternoon. 13 Q. Before we broke for lunch, we were talking 14 about the functional limitations in Claim 1 of the '107 15 patent. Is it correct that for those three functional 16 limitations we discussed, you do not have opinion -- an 17 opinion, sitting here today, as to whether those 18 functions ever need to be performed? 19 A. Which three? Can you refresh me? Which 20 three? 21 Q. The language that's occurring for Claim 1 22 of the '107 patent, starting at column 18 -- sorry. 23 Col -- Line 18 through Line 25, starting with "to draw 24 different magnitudes of DC current flow to the end." 25 MR. COHEN: Objection, form.</p>

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<p style="text-align: right;">Page 110</p> <p>1 A. Okay. I'm ready.</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. Do you have -- you are looking at your</p> <p>4 declaration right there?</p> <p>5 A. And the Claims 18 through -- or Lines 18</p> <p>6 through ...</p> <p>7 Q. Yeah. Before lunch, we discussed that</p> <p>8 those were functional limitations; correct?</p> <p>9 A. Right.</p> <p>10 Q. And my question is: Sitting here today, do</p> <p>11 you have an opinion as to whether those functional</p> <p>12 limitations ever actually need to be performed to be</p> <p>13 encompassed in the scope of Claim 1?</p> <p>14 MR. COHEN: Objection, form, beyond the</p> <p>15 scope of the deposition.</p> <p>16 A. I do not, no.</p> <p>17 BY MR. BLUESTONE:</p> <p>18 Q. You do not have an opinion as to that;</p> <p>19 correct?</p> <p>20 A. Right.</p> <p>21 Q. Let's ... would that also apply to Claim</p> <p>22 104 of the '107 patent, which is on Page 4 of</p> <p>23 Exhibit 6?</p> <p>24 MR. COHEN: Same objections.</p> <p>25 A. Just refresh me. What is it that's</p>	<p style="text-align: right;">Page 112</p> <p>1 construction analysis, I've covered in my report. I</p> <p>2 think those are -- those are my opinions.</p> <p>3 BY MR. BLUESTONE:</p> <p>4 Q. Okay. And you understand what I'm trying</p> <p>5 to get at here is to make sure I understand the scope</p> <p>6 of what your opinions are. So if you don't have</p> <p>7 opinion on it, that's okay; I just don't want to be</p> <p>8 surprised later that all of a sudden you've come up</p> <p>9 with an opinion later.</p> <p>10 So what I'm asking is: Sitting here today,</p> <p>11 do you have an opinion on that?</p> <p>12 MR. COHEN: Objection, form.</p> <p>13 THE WITNESS: I'm sorry. What?</p> <p>14 MR. BLUESTONE: He was just stating his</p> <p>15 objections for the record.</p> <p>16 THE WITNESS: Oh. Okay.</p> <p>17 MR. BLUESTONE: You can go ahead.</p> <p>18 A. No, I agree with the opinions that I stated</p> <p>19 in my -- in my declaration, about the use of the</p> <p>20 infinitive "to" and indicating it needs to be "designed</p> <p>21 and configured," and beyond that, no.</p> <p>22 Q. Okay. Do you understand whether</p> <p>23 performance of those recited functions is a claim</p> <p>24 construction dispute presently before or between the</p> <p>25 parties?</p>
<p style="text-align: right;">Page 111</p> <p>1 applying to this, also?</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. You don't have an opinion as to whether the</p> <p>4 functional limitations recited in Claim 104 need to</p> <p>5 actually be performed ever; correct? You have no</p> <p>6 opinion to that effect?</p> <p>7 MR. COHEN: Sorry. Same objections.</p> <p>8 A. Yes, I have no opinion at this time.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. Do you expect to have any opinions as to</p> <p>11 this at a later time?</p> <p>12 MR. COHEN: Same objections.</p> <p>13 A. I might if it becomes an issue, yeah. I</p> <p>14 mean --</p> <p>15 BY MR. BLUESTONE:</p> <p>16 Q. What would you have to do to formulate that</p> <p>17 opinion?</p> <p>18 A. Well, I would assume that would be in</p> <p>19 conjunction with some type of infringement</p> <p>20 consideration and I would have to consider all the</p> <p>21 relevant facts at that point.</p> <p>22 Q. Would you have -- what would you do to</p> <p>23 address that as part of a claim construction analysis?</p> <p>24 MR. COHEN: Objection, form.</p> <p>25 A. Well, I think the claim -- the claim</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Do I understand whether it is?</p> <p>2 Q. Do you have an understanding of whether</p> <p>3 there is a dispute between the parties, as a matter of</p> <p>4 claim construction, as to whether these functional</p> <p>5 limitations actually have to be performed?</p> <p>6 A. I'm -- I don't know quite what to say. Can</p> <p>7 you rephrase that or -- I mean, I ...</p> <p>8 Q. Well, do you under -- do you have any</p> <p>9 knowledge as to whether or not -- whether the functions</p> <p>10 are actually performed is a -- is a claim construct --</p> <p>11 an active claim construction dispute between the</p> <p>12 parties right now?</p> <p>13 A. I mean, I understand it's an issue. I</p> <p>14 don't know that it's a claim construction issue or not.</p> <p>15 Q. Okay. But you understand that it's</p> <p>16 something that the parties are disputing?</p> <p>17 A. Yes.</p> <p>18 Q. And you understand that defendants'</p> <p>19 position is that, in view of all the intrinsic</p> <p>20 evidence, these functions have to actually be</p> <p>21 performed?</p> <p>22 A. I have heard that, yes.</p> <p>23 Q. Okay. All right. So let's turn to Page 5.</p> <p>24 A. Of what?</p> <p>25 Q. All right. So now we're talking about the</p>

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<p style="text-align: right;">Page 114</p> <p>1 '838 patent, which we haven't really spent a lot of 2 time on yet. 3 Claim 1 of '838 starts out talking about "a 4 central piece of network equipment comprising," and 5 then below it's talking about at least one Ethernet 6 connector. Do you see that, that clause from 14 7 through 16? 8 A. Yes. 9 Q. Would you agree that that's a structural 10 limitation, what the connector is? 11 A. Yes. 12 Q. Okay. And do you have any opinion on the 13 effect of the language used to carry BaseT Ethernet 14 communication signals, whether it affects what an 15 Ethernet connector comprised in the first and second 16 pairs of contacts is? 17 A. They're saying that it will be used to 18 carry Ethernet communication signals. That's what 19 Ethernet connectors do. 20 Q. Does the phrase "used to carry BaseT 21 Ethernet communication signals" have any effect on the 22 structure recited previously in that -- that clause? 23 MR. COHEN: Objection, form, beyond the 24 scope of the deposition. 25 A. Well, it does not -- does not change what</p>	<p style="text-align: right;">Page 116</p> <p>1 magnitudes of DC current flow and designed and 2 configured to control application of at least one 3 electrical condition. 4 Q. Okay. So the first function relates to "to 5 detect different magnitudes of current flow," correct? 6 A. Right. 7 Q. And the rest of that clause; correct? 8 And -- well, let me clarify. To detect different 9 magnitudes of DC current flow through -- via at least 10 one of the contacts of the first and second pairs of 11 contacts. That's one functional limitation; correct? 12 A. Correct. 13 Q. And then the section function -- second 14 functional limitation starts with "to control 15 application" and then goes through the remainder of the 16 claim; correct? 17 A. Correct. 18 Q. And sitting here today, do you have an 19 opinion as to whether those functional limitations ever 20 need to be performed? 21 A. Again, my opinion is that the equipment 22 must be designed or configured to do those things, so 23 it must be -- must have the capability to do them. 24 Q. But do you have an opinion as to whether 25 they actually need to ever happen; actual performance?</p>
<p style="text-align: right;">Page 115</p> <p>1 an Ethernet connector is, I mean, if that's what you 2 are asking. 3 BY MR. BLUESTONE: 4 Q. Okay. Does it affect what pairs of 5 contacts may be relevant? 6 MR. COHEN: Same objections. 7 A. No, it does not. 8 BY MR. BLUESTONE: 9 Q. Okay. All right. So below, now we have 10 Line 17, "the central piece of network equipment," and 11 then it starts with "to detect different magnitudes." 12 A. Yes. 13 Q. And then continues to "and to control 14 application." 15 Are all the -- is all the language recited 16 after "the central piece of network equipment to," are 17 those all functional limitations? 18 A. I believe so. 19 Q. And how many functional limitations would 20 you say are recited in Lines 17 through 23? 21 A. I would say two. 22 Q. And can you just briefly describe what the 23 two functions are? 24 A. Yes. It is my -- my interpretation is, 25 it's designed or configured to detect different</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. COHEN: Objection, form. 2 A. I don't believe that they do, but they -- 3 but must be capable of doing it. 4 BY MR. BLUESTONE: 5 Q. What do you mean, I don't believe that they 6 do? 7 A. I don't believe that they have to have 8 already done this in the past. They have to be 9 designed and configured so that they can do it. 10 Q. Does it have to ever happen in the future 11 or the present? 12 A. I -- I -- to me, my understanding is 13 there's no time frame; that if it's designed and 14 configured to do that, then it meets this claim. 15 Q. Okay. Let's talk about that first 16 functional limitation. 17 What allows it to detect different 18 magnitudes of DC current flow? 19 MR. COHEN: Objection, form, beyond the 20 scope of the deposition. 21 A. I'm not -- I'm not following the question. 22 BY MR. BLUESTONE: 23 Q. Well, it says -- your opinion is that it 24 would have to be configured to or designed to do this; 25 right?</p>

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<p style="text-align: right;">Page 118</p> <p>1 A. Right.</p> <p>2 Q. What, in the central piece of network</p> <p>3 equipment, provides for that? How would you do that?</p> <p>4 MR. COHEN: Objection, form, beyond the</p> <p>5 scope of the deposition.</p> <p>6 A. You are asking me how would I design the</p> <p>7 equipment?</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. Well, sorry. We kind of talked over each</p> <p>10 other. Let me start over here.</p> <p>11 Is there anything recited in the claim, any</p> <p>12 structure in the claim, to tell you how that central</p> <p>13 piece of network equipment is supposed to detect</p> <p>14 different magnitudes of DC current flow?</p> <p>15 MR. COHEN: Objection, form, beyond the</p> <p>16 scope of the deposition.</p> <p>17 A. In -- are you -- in this claim, does it</p> <p>18 tell you that?</p> <p>19 BY MR. BLUESTONE:</p> <p>20 Q. Mm-hmm.</p> <p>21 A. No. It says that's a function you need to</p> <p>22 do; that's a capability you need to have.</p> <p>23 Q. And what about "to control application"?</p> <p>24 It's just reciting what it's supposed to do; it doesn't</p> <p>25 tell you how it's supposed to be done. Correct?</p>	<p style="text-align: right;">Page 120</p> <p>1 magnitudes of DC current flow via at least one of the</p> <p>2 contacts of the first and second pairs is -- is okay?</p> <p>3 MR. COHEN: Objection, form, beyond the</p> <p>4 scope of the deposition.</p> <p>5 A. Well, again, it's -- it needs to be able to</p> <p>6 do that. "Any way" is a pretty broad thing. I</p> <p>7 would -- it is somewhat easier to analyze specific</p> <p>8 examples than anything one might imagine.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. Is there anything wrong, in your</p> <p>11 understanding, for the principles that are -- the legal</p> <p>12 principles that are applied to you here? Is there</p> <p>13 anything wrong with this hybrid apparatus method claim</p> <p>14 that you object to?</p> <p>15 MR. COHEN: Objection, form.</p> <p>16 A. I -- I -- I don't understand the hybrid</p> <p>17 apparatus method claim.</p> <p>18 BY MR. BLUESTONE:</p> <p>19 Q. I mean, there's language here in your</p> <p>20 report where you -- you're talking about the use of the</p> <p>21 infinitive and you say, in column -- or is it paragraph</p> <p>22 14, "Defendants proposed construction of the term,</p> <p>23 quote, to, end quote, is incorrect because it would be</p> <p>24 improperly transforming apparatus claims into hybrid</p> <p>25 apparatus method claims."</p>
<p style="text-align: right;">Page 119</p> <p>1 MR. COHEN: Same objection.</p> <p>2 A. It does not in this claim, no.</p> <p>3 BY MR. BLUESTONE:</p> <p>4 Q. Would you look to the specification to tell</p> <p>5 you in what manners it should be doing these functions?</p> <p>6 MR. COHEN: Same objections.</p> <p>7 A. The specification gives a preferred</p> <p>8 embodiment, it gives an example which shows how these</p> <p>9 can be done, and one of ordinary skill in the art would</p> <p>10 know that there are many other ways it could be done.</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. So you don't believe it would be limited to</p> <p>13 what is shown in the specifications and equivalents</p> <p>14 thereof?</p> <p>15 MR. COHEN: Objection, form, beyond the</p> <p>16 scope of the deposition.</p> <p>17 A. I -- I -- I don't believe it's limited to</p> <p>18 what's shown in the specification, no. I mean, that's</p> <p>19 a preferred embodiment. There are other ways you could</p> <p>20 -- it would be -- a person of skill in the art would</p> <p>21 know there are other ways you can implement these</p> <p>22 things.</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. Okay. So any way in which this central</p> <p>25 piece of network equipment can detect different</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Right.</p> <p>2 Q. What is your basis for saying that that's</p> <p>3 improper?</p> <p>4 A. And you were imply -- you were imply --</p> <p>5 well, because these were apparatus claims and they</p> <p>6 discuss the apparatus and -- and its structure, and so</p> <p>7 on. That's what they do.</p> <p>8 Q. My question is: Do you believe that hybrid</p> <p>9 apparatus method claims are improper based on some</p> <p>10 legal principle guiding your analysis?</p> <p>11 A. Well, it's my understanding they should be</p> <p>12 either apparatus or method, yes.</p> <p>13 Q. Okay. And your way of making it not be</p> <p>14 that is to add in the words "capable" -- sorry --</p> <p>15 "configured to" or "designed to." That transforms it</p> <p>16 into the fact that it's just apparatus; is that</p> <p>17 correct?</p> <p>18 MR. COHEN: Objection, form.</p> <p>19 A. That's the way I interpret the language</p> <p>20 here, yes.</p> <p>21 BY MR. BLUESTONE:</p> <p>22 Q. Do you have any understanding on why the</p> <p>23 claims, as drafted, don't include the phrase "operable</p> <p>24 to" or "configured to"?</p> <p>25 A. No. I didn't write the claims. I'm just</p>

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<p style="text-align: right;">Page 122</p> <p>1 trying to interpret them the best I can.</p> <p>2 Q. If you weren't governed by this hybrid</p> <p>3 method apparatus concern, would it be a reasonable</p> <p>4 interpretation to say that these functional limitations</p> <p>5 have to be performed?</p> <p>6 MR. COHEN: Objection, form.</p> <p>7 A. Well, again, if they did have to be</p> <p>8 performed, I don't think it would be written this way.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. Well, would you agree that the use of just</p> <p>11 the infinitive -- now we're talking the universe of</p> <p>12 grammar and not necessarily electrical engineering, but</p> <p>13 -- the infinitive can be talked about -- can be used to</p> <p>14 talk about the result that needs to be achieved?</p> <p>15 Would you agree with that?</p> <p>16 MR. COHEN: Objection, form.</p> <p>17 A. The infinitive "can be used to talk about</p> <p>18 the result that needs to be achieved"? I'm -- I'm not</p> <p>19 following that, no.</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. So the phrase is "to detect different</p> <p>22 magnitudes." That's the beginning part of this. "The</p> <p>23 central piece of network equipment to detect different</p> <p>24 magnitudes of current flow." You're saying I need to</p> <p>25 read in the word "designed" or "configured" even though</p>	<p style="text-align: right;">Page 124</p> <p>1 A. I'm -- I'm not sure I understand what</p> <p>2 you're getting at.</p> <p>3 BY MR. BLUESTONE:</p> <p>4 Q. Well, I mean, is this an issue that</p> <p>5 reasonable people can differ on as to whether "to</p> <p>6 detect" requires a result to be achieved or versus</p> <p>7 whether or not you should add in the language</p> <p>8 "configured" or "designed"?</p> <p>9 MR. COHEN: Objection, form, beyond the</p> <p>10 scope of the deposition.</p> <p>11 A. Well, that -- that's not the way I would</p> <p>12 interpret it.</p> <p>13 BY MR. BLUESTONE:</p> <p>14 Q. That's not how you would interpret it, but</p> <p>15 is it completely unreasonable to take the other side?</p> <p>16 MR. COHEN: Objection, form.</p> <p>17 A. I -- you know, I can't speak for that.</p> <p>18 That's not the way I interpret it. I ...</p> <p>19 BY MR. BLUESTONE:</p> <p>20 Q. Now, paragraph 16, you said you reviewed --</p> <p>21 read the claims in light of the specification and the</p> <p>22 file history. Do you see that on paragraph 16?</p> <p>23 A. Yes. Yes.</p> <p>24 Q. Did you also consider the claims in view of</p> <p>25 the language of the claim, as a whole?</p>
<p style="text-align: right;">Page 123</p> <p>1 it's not written in the claim?</p> <p>2 A. Right.</p> <p>3 Q. Correct. The in -- is that the only way</p> <p>4 you can use the words -- the infinitive "to"? Does the</p> <p>5 use of the infinitive always require "configured to"?</p> <p>6 MR. COHEN: Objection, form.</p> <p>7 A. You mean throughout the English language?</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. Yeah.</p> <p>10 A. Well, no.</p> <p>11 Q. So there could be certain circumstances</p> <p>12 where you use the infinitive and you are talking about</p> <p>13 the result that needs to be achieved?</p> <p>14 MR. COHEN: Objection, form.</p> <p>15 A. I -- it's not ringing a bell.</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. Okay. So if we put aside your hybrid</p> <p>18 method apparatus claim issue and you look at the plain</p> <p>19 meaning of the language of this claim, "The central</p> <p>20 piece of network equipment to detect different</p> <p>21 magnitudes of DC current flow," et cetera, is it your</p> <p>22 position that it's just completely ridiculous to think</p> <p>23 that it's actually talking about a function that's</p> <p>24 being -- that needs to be performed?</p> <p>25 MR. COHEN: Objection, form.</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Yes, I considered the claim specification,</p> <p>2 mm-hmm.</p> <p>3 Q. Okay. Did you look at the file history?</p> <p>4 A. I did, yes. I didn't memorize it, but I</p> <p>5 looked at it.</p> <p>6 Q. Okay. Can you generally recall what you</p> <p>7 looked at and whether it affects your interpretation as</p> <p>8 it pertains to the '838 patent?</p> <p>9 A. I -- I don't recall. I didn't see anything</p> <p>10 that made me think my interpretation was wrong. Let's</p> <p>11 put it that way.</p> <p>12 Q. Okay. Did you see anything that affected</p> <p>13 these clauses in the '838 prosecution history?</p> <p>14 A. I -- I can't recall off the top of my head.</p> <p>15 Q. Okay. What about for the '760 file</p> <p>16 history? Is there anything in the '760 file history</p> <p>17 that you thought could have been relevant?</p> <p>18 MR. COHEN: Objection, form.</p> <p>19 A. Nothing rings a bell.</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. Okay. What about the '107 patent?</p> <p>22 A. Ditto.</p> <p>23 Q. And there's nothing in your report that</p> <p>24 cites explicitly to the file history; correct?</p> <p>25 MR. COHEN: Objection, form.</p>

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<p style="text-align: right;">Page 126</p> <p>1 A. There -- there is -- I don't believe there</p> <p>2 is, no.</p> <p>3 BY MR. BLUESTONE:</p> <p>4 Q. Okay. And is it safe to assume that if</p> <p>5 there was something that you thought was relevant, you</p> <p>6 would have referenced it in your report? Correct?</p> <p>7 A. Probably, yes.</p> <p>8 Q. Let's go back to the '760 patent. Are</p> <p>9 there any functional limitations in the '760 patent</p> <p>10 Claim 1?</p> <p>11 A. Is there a particular one you are concerned</p> <p>12 about?</p> <p>13 Q. If you could just go through the Claim 1</p> <p>14 and just identify which items you believe are</p> <p>15 functional limitations, that would be helpful.</p> <p>16 A. Okay. I'm working on it.</p> <p>17 Q. That's fine. Take your time.</p> <p>18 A. I'm more of a structural guy, myself.</p> <p>19 All right. So you want to know what's your</p> <p>20 structural, what's your functional?</p> <p>21 Q. Sure.</p> <p>22 A. Is that it?</p> <p>23 Q. Correct.</p> <p>24 A. Okay. Starting at Line 19, the data</p> <p>25 signaling pairs are structural; having one -- at least</p>	<p style="text-align: right;">Page 128</p> <p>1 question, but ...</p> <p>2 Q. Well, when we were talking about the '838</p> <p>3 Claim 1, where it was talking about to detect and to --</p> <p>4 "to detect different magnitudes of DC current flow --</p> <p>5 A. Right.</p> <p>6 Q. -- and to control application."</p> <p>7 A. Mm-hmm.</p> <p>8 Q. That's on Page 5 of Exhibit 6.</p> <p>9 A. Okay.</p> <p>10 Q. Previously, you said those were functional</p> <p>11 limitations. For the '760, correct me if I'm wrong, I</p> <p>12 believe it's using the same functional limitations to</p> <p>13 detect and to control.</p> <p>14 A. Okay. I see what you're saying. Yeah.</p> <p>15 Got it.</p> <p>16 Q. Would you -- I -- I want to know your</p> <p>17 opinion, not -- I'm not the one testifying.</p> <p>18 Would you say those are functional</p> <p>19 limitations in Page 1, lines 33 through 36, or</p> <p>20 structural?</p> <p>21 A. I mean, I guess you could consider those</p> <p>22 functional, too.</p> <p>23 Q. All right. Let's go back to Exhibit 1.</p> <p>24 A. Exhibit 1.</p> <p>25 Q. Paragraphs 54 through 66, you are</p>
<p style="text-align: right;">Page 127</p> <p>1 one DC supply is structural; having at least one path</p> <p>2 to draw current is structural; detect at least two</p> <p>3 different magnitudes, also structural, in my opinion.</p> <p>4 Q. So are there any functional limitations?</p> <p>5 You've said structural -- structural for all those.</p> <p>6 A. Okay. And the other stuff looked more</p> <p>7 functional to me.</p> <p>8 Q. So the piece of -- starting from the</p> <p>9 bottom, Lines 33 through 35, "to detect at least two</p> <p>10 different magnitudes of --" current "-- of the current</p> <p>11 flow through the loop and to control application of at</p> <p>12 least one electrical condition to at least two of the</p> <p>13 conductors," is that -- are those functional</p> <p>14 limitations or structural limitations?</p> <p>15 A. They seem structural to me, because</p> <p>16 that's -- you have to have things and equipment to do</p> <p>17 that.</p> <p>18 Q. So there's nothing in the '760 that you</p> <p>19 would deem to be a functional limitation?</p> <p>20 A. Oh, I didn't say there was nothing.</p> <p>21 Q. Sorry. So what are the items that you</p> <p>22 believe are functional limitations?</p> <p>23 A. "... used to carry BaseT Ethernet</p> <p>24 communication signals" sounds functional. And I'm not</p> <p>25 a hundred percent sure what you're getting at with this</p>	<p style="text-align: right;">Page 129</p> <p>1 discussing current and current flow.</p> <p>2 A. 54 through 66. All right. Yes, I see</p> <p>3 that.</p> <p>4 Q. Okay. In Paragraph 65, you talk about --</p> <p>5 you say that Claim 1 merely requires a path that is</p> <p>6 configured to draw DC current. Do you see that?</p> <p>7 A. And this is Claim 1 of the '760?</p> <p>8 Q. Of the '107.</p> <p>9 A. '107. I'm sorry.</p> <p>10 Q. That's fine.</p> <p>11 A. All right. For the purpose of drawing DC</p> <p>12 current, yes.</p> <p>13 Q. You say Claim 1 merely requires a path that</p> <p>14 is configured to draw DC current. When you're saying</p> <p>15 that, are you referring to the entire claim, Claim 1 of</p> <p>16 the '107 patent? That's all that's required?</p> <p>17 MR. COHEN: Objection, form.</p> <p>18 A. No, it's the "at least one path for the</p> <p>19 purpose of drawing DC current," is what I'm ...</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. Okay. And we discussed this earlier, but</p> <p>22 you say that current and current flow are not claim</p> <p>23 structure elements, correct, in Paragraph 64?</p> <p>24 A. Correct.</p> <p>25 Q. Now, why, in Paragraph 57, do you say that</p>

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<p style="text-align: right;">Page 130</p> <p>1 current flow is less commonly used?</p> <p>2 A. Just my -- my experience.</p> <p>3 Q. And is it that the word flow is somehow</p> <p>4 redundant? Is that why it's not used?</p> <p>5 A. I think the two are pretty much</p> <p>6 interchangeable. I mean, current is a flow of charge,</p> <p>7 so current flow is slightly redundant, in the same way</p> <p>8 that DC current is redundant. Right? DC is direct</p> <p>9 current. So a direct current current. We say that and</p> <p>10 nobody bats an eye.</p> <p>11 Q. Well, but direct current, though, is</p> <p>12 limiting the scope of current in some perspective;</p> <p>13 right? It can't change polarities to be direct</p> <p>14 current; correct?</p> <p>15 A. Right.</p> <p>16 Q. Okay.</p> <p>17 A. DC means direct current. We often say DC</p> <p>18 current --</p> <p>19 Q. Oh. I understand now. Okay.</p> <p>20 A. -- which is redundant, in the same way that</p> <p>21 current flow would be redundant. You will also hear</p> <p>22 people say flow of current sometimes, and it's kind of</p> <p>23 understood that if there's current, it's flowing. So</p> <p>24 those are just different ways of saying the same thing.</p> <p>25 Q. But in this claim, your position is that</p>	<p style="text-align: right;">Page 132</p> <p>1 assumption that the word "flow" was added during</p> <p>2 prosecution, would you say it was added for no reason?</p> <p>3 MR. COHEN: Objection, form.</p> <p>4 A. I don't know.</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. So sitting here today, you don't know why</p> <p>7 "flow" was added to the claims?</p> <p>8 A. Correct.</p> <p>9 Q. I'll direct your attention to Paragraphs</p> <p>10 61, 62 -- sorry -- 61 and 62, and read it to yourself</p> <p>11 and let me know when -- when you're done, please.</p> <p>12 Are you finished reading those paragraphs?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Thanks very much.</p> <p>15 Okay. So starting with 61, you say, in the</p> <p>16 middle of that -- that paragraph, where terms current</p> <p>17 and current flow are used, it is with respect to DC,</p> <p>18 quote, or direct current. Your point here is that both</p> <p>19 current and current flow, as used in Claim 1 of the</p> <p>20 '107 patent, both are preceded by the word "DC,"</p> <p>21 correct?</p> <p>22 A. Right.</p> <p>23 Q. And because it's preceded by the term "DC,"</p> <p>24 a person of ordinary skill in the art would understand</p> <p>25 that both current and current flow are talking about</p>
<p style="text-align: right;">Page 131</p> <p>1 there doesn't ever need to actually be any current</p> <p>2 flow; correct?</p> <p>3 A. Correct. It's there for the purpose of</p> <p>4 drawing current.</p> <p>5 Q. Did you at all consider the fact that the</p> <p>6 word "flow" is added to the claims during prosecution</p> <p>7 of the '107 or what became the '107 patent?</p> <p>8 A. Did I consider? No.</p> <p>9 Q. Did you ever look at the portion of the</p> <p>10 prosecution history that shows the word "flow" being</p> <p>11 added?</p> <p>12 A. I don't recall if I did or not.</p> <p>13 Q. Okay. So sitting here today, there's</p> <p>14 nothing that you recall in the prosecution history as</p> <p>15 to how "flow" was added to create the phrase "current</p> <p>16 flow"?</p> <p>17 A. Correct.</p> <p>18 Q. And in your opinion, "flow," as used in the</p> <p>19 claim, for "current flow," is just superfluous with</p> <p>20 current?</p> <p>21 MR. COHEN: Objection, form.</p> <p>22 A. I -- I think they mean essentially the same</p> <p>23 thing, yes.</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. Okay. Well, if we start with the</p>	<p style="text-align: right;">Page 133</p> <p>1 direct current; correct?</p> <p>2 A. Right.</p> <p>3 Q. Now, Paragraph 62, you say in every</p> <p>4 instance it's been preceded by DC; correct?</p> <p>5 A. Correct.</p> <p>6 Q. Then there's Paragraph 63, then, and I'm</p> <p>7 going to parse the language a little bit to -- to -- to</p> <p>8 get to my point here.</p> <p>9 The first word in Paragraph 63 is "thus."</p> <p>10 To me, "thus" means "it follows that," or something</p> <p>11 like that. Does that make sense of what you're getting</p> <p>12 at here?</p> <p>13 A. Yes.</p> <p>14 Q. So you are basically saying, because it's</p> <p>15 preceded by DC current flow, a person of ordinary skill</p> <p>16 in the art would understand that the terms current and</p> <p>17 current flow mean the same thing.</p> <p>18 Why? I don't get why that follows.</p> <p>19 A. Well, because we're talking about direct</p> <p>20 current in every case.</p> <p>21 Q. Mm-hmm.</p> <p>22 A. And as I've said before, current is a flow</p> <p>23 of charge; therefore, current is always a flow. So</p> <p>24 whether you say current flow or you just say current,</p> <p>25 to me, is pretty much the same thing.</p>

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<p style="text-align: right;">Page 134</p> <p>1 Q. But how does it suggest in any way that 2 current and current flow mean the same thing based on 3 the fact that they're both preceded by the word "DC"? 4 I don't understand that. 5 A. Well, we're talking about direct current in 6 all -- all cases, whether it's current or current flow. 7 They -- to me, they're the same. 8 Q. But I guess I have to ask again, how does 9 the fact that it's preceded by the word "DC" lead to 10 one conclusion of it or the other as to whether current 11 and current flow mean the same thing? 12 A. Well, I think they're both used 13 consistently to refer to DC current. 14 Q. Okay. Let's turn to Claim 1 of the '107 15 patent. 16 Would you agree with me that DC current 17 without the word "flow" is only used once in the claim? 18 And take your time to go through it. I don't want -- I 19 don't want you to feel rushed. 20 A. Yeah, that is true. 21 Q. Okay. And that is used in conjunction with 22 the structural limitation of at least one path coupled 23 across; correct? 24 A. Yes, used in conjunction with one path, 25 right.</p>	<p style="text-align: right;">Page 136</p> <p>1 BY MR. BLUESTONE: 2 Q. Okay. Yeah. I'm just talking about Claim 3 1 of the '107. 4 A. Yes. 5 Q. Does the fact that it's using different 6 words -- in fact, the addition of the word "flow" -- 7 factor into the analysis, at all, as to whether they 8 should have different meanings? 9 A. I'm sorry. Does the fact -- what? 10 Q. Does the fact that it's using different 11 words -- namely, the addition of the word "flow" -- 12 A. Right. 13 Q. -- factor into your analysis as to whether 14 or not they should have the same or different meanings? 15 A. Well, in -- in normal usage, current and 16 current flow are the same thing. 17 Q. Okay. And you're talking about just -- 18 you're walking down the street -- 19 A. Yeah. 20 Q. -- current and current flow means the same 21 thing to you? 22 A. Right. 23 Q. I'm not talking about this claim. We're 24 now using the principles of a person of ordinary skill 25 in the art trying to determine what the patent claim</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Okay. Now, later in the claim, current 2 flow is used three times; correct? DC current flow. 3 A. Yes. 4 Q. Once is on Line 19; correct? 5 A. Right. 6 Q. The second time it appears is on Line 20; 7 correct? 8 A. Correct. 9 Q. And the third time it appears is on Line 10 23; correct? 11 A. Correct. 12 Q. Each one of those instances of current flow 13 relates to one of the functional limitations that you 14 discussed earlier; correct? 15 MR. COHEN: Objection, form. 16 A. Yeah, I believe so. 17 BY MR. BLUESTONE: 18 Q. Okay. So is it fair to say that in the 19 instances in the claim in which it's referring to 20 structure, the claim uses DC current, and as for 21 when -- when it's referring to the function, it's 22 referring to DC current flow? 23 MR. COHEN: Objection, form. 24 A. I mean, it looks like this claim might be 25 that way.</p>	<p style="text-align: right;">Page 137</p> <p>1 means. 2 Does the fact that there are different 3 words being used suggest, in any way, that they should 4 have different meanings? 5 A. Not necessarily. 6 Q. Does it factor into your analysis that we 7 should consider the different words that are used? 8 A. Sure, you could consider. 9 Q. And did you consider, at all, how the 10 addition of the word "flow" could impart a different 11 meaning? 12 A. I -- I don't see that it does impart a 13 different meaning. 14 Q. Okay. Was there ever a point in time in 15 which you looked at it and came to the conclusion that 16 it did impart different meanings? 17 A. No. 18 Q. And sitting here today, you would not 19 believe that a plausible interpretation would be that 20 current is the flow of electric charge and current flow 21 is the flow of electric charge in one direction; 22 correct? 23 MR. COHEN: Objection, form. 24 BY MR. BLUESTONE: 25 Q. I can -- do you want me to say it again?</p>

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<p style="text-align: right;">Page 138</p> <p>1 A. Yes, say it again.</p> <p>2 Q. Of course.</p> <p>3 Sitting here today, you would not have --</p> <p>4 you would not believe it would be an appropriate</p> <p>5 interpretation to say that current is the flow of</p> <p>6 electric charge, while current flow is the flow of</p> <p>7 electric charge in one direction. That would be</p> <p>8 improper. Correct?</p> <p>9 MR. COHEN: Objection, form.</p> <p>10 A. That -- that is not the way I would</p> <p>11 interpret it, right.</p> <p>12 BY MR. BLUESTONE:</p> <p>13 Q. Okay. And have you ever had an opinion to</p> <p>14 that effect?</p> <p>15 A. Have I ever?</p> <p>16 Q. That you are aware of.</p> <p>17 A. I don't recall.</p> <p>18 Q. Let's go to Paragraph 102 real quick.</p> <p>19 A. 102 in the declaration?</p> <p>20 Q. Yes, sir. And this is talking about BaseT,</p> <p>21 and I'll get to that later in the deposition.</p> <p>22 A. Okay.</p> <p>23 Q. But you say, during prosecution the, quote,</p> <p>24 10, end quote, in front of BaseT was removed.</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Yeah, so the 10BaseT wiring is, if</p> <p>2 anything, a superset of -- well, BaseT includes all of</p> <p>3 them, which is all the same, and 10BaseT will work on</p> <p>4 wiring for any of the Base-Ts, so with that particular</p> <p>5 thing, I'm not sure it even makes much difference if</p> <p>6 they took it out, because it wasn't talking about a</p> <p>7 10BaseT network, it was talking about a 10BaseT wiring</p> <p>8 scheme.</p> <p>9 Q. Interesting. Okay. Let's come back to</p> <p>10 that --</p> <p>11 A. Okay.</p> <p>12 Q. -- the specifics of BaseT. Because I</p> <p>13 don't -- I don't want to get us distracted from what</p> <p>14 we're talking about on this topic. But we will come</p> <p>15 back to that. I promise you.</p> <p>16 A. Okay.</p> <p>17 Q. Does that -- so looking at that example of</p> <p>18 10BaseT, that removal of "10" doesn't necessarily</p> <p>19 impart a different meaning; the fact that that term was</p> <p>20 removed?</p> <p>21 A. No, I -- I think it makes it more standard</p> <p>22 like, but it doesn't necessarily --</p> <p>23 Q. Change the scope?</p> <p>24 A. -- change the scope, in my opinion. Yeah.</p> <p>25 Q. Okay. All right. Let's talk about BaseT a</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. And presumably, correct me if I'm wrong,</p> <p>2 your point here is saying that when they changed the</p> <p>3 wording, they changed scope of the meaning of the</p> <p>4 clause; is that correct?</p> <p>5 A. Well, yes and no. The -- it was talking</p> <p>6 about a Base -- 10BaseT wiring scheme, which is the</p> <p>7 same wiring scheme used for the other BaseTs, so it</p> <p>8 doesn't really make a great deal of difference to me.</p> <p>9 Q. But --</p> <p>10 A. It didn't say 10BaseT --</p> <p>11 Q. The 10BaseT is narrower than just BaseT</p> <p>12 under your construction; correct?</p> <p>13 A. Well, a 10BaseT wiring scheme is actually</p> <p>14 broader than -- it would actually be the same as a</p> <p>15 BaseT wiring scheme, because they --</p> <p>16 Q. That's not necessarily true; right?</p> <p>17 Because a 10BaseT allows you to use Cat 3 --</p> <p>18 A. Right.</p> <p>19 Q. -- but a hundred BaseT would make sure that</p> <p>20 you have to use at least Cat 5; right?</p> <p>21 A. Right, but if it will -- if a hundred BaseT</p> <p>22 will work on it, so will 10. All right?</p> <p>23 Q. Okay. I just want to make sure I</p> <p>24 understood what you meant by "broader." That was a</p> <p>25 little confusing to me.</p>	<p style="text-align: right;">Page 141</p> <p>1 little bit. This is Paragraphs 94 through 105 of your</p> <p>2 declaration, Exhibit 1.</p> <p>3 In Paragraph 98, you say the plain and</p> <p>4 ordinary meaning is, quote, twisted pair Ethernet per</p> <p>5 the IEEE 802.3 standards, and you list some examples.</p> <p>6 Do you see that?</p> <p>7 A. 98?</p> <p>8 Q. Mm-hmm.</p> <p>9 A. Yes.</p> <p>10 Q. Does 1Base5 -- is 1Base5 included in</p> <p>11 10BaseT?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 A. It's not a BaseT.</p> <p>15 Q. But it is a twisted pair, isn't it?</p> <p>16 A. 1Base5 ... I don't recall if it is or not,</p> <p>17 but it -- but it's not a BaseT.</p> <p>18 Q. I can put this in as an exhibit later, if</p> <p>19 necessary, but this is on Page 140 of --</p> <p>20 A. 1Base5.</p> <p>21 Q. -- I believe, your book Residential</p> <p>22 Networks.</p> <p>23 A. Yes.</p> <p>24 Q. Do you see the top entry in that column?</p> <p>25 A. Yup, the Base5 UTP. Yeah, it's so long</p>

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<p style="text-align: right;">Page 142</p> <p>1 ago, I'd forgotten about it.</p> <p>2 Q. Yeah. So UTP means -- what does UTP mean?</p> <p>3 A. Unshielded twisted pair.</p> <p>4 Q. Okay. So 1Base5 is a twisted pair network</p> <p>5 or a twisted pair configuration? Pardon me.</p> <p>6 A. But it's not referred to as BaseT.</p> <p>7 Q. It's not referred to as BaseT.</p> <p>8 A. Right.</p> <p>9 Q. But your ordinary and plain meaning is</p> <p>10 twisted pair Ethernet per the 802.3 standards.</p> <p>11 A. .3 standards; e.g. 10BaseT this, a hundred</p> <p>12 BaseT that, and a thousand BaseT that, yes.</p> <p>13 Q. Yeah. And you would agree with me that</p> <p>14 1Base5 is twisted pair; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And 1Base5 is Ethernet; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it is a standard that's recited in the</p> <p>19 802.3 standards. It's an old one.</p> <p>20 A. Probably, yes, but it is not one of the</p> <p>21 BaseT standards.</p> <p>22 Q. I am confused as to how 1Base5 does not --</p> <p>23 is not encompassed in your definition of twisted pair</p> <p>24 Ethernet, per IEEE 802.3.</p> <p>25 A. Well, again, what it says is BaseT</p>	<p style="text-align: right;">Page 144</p> <p>1 MR. COHEN: Objection, form.</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. You don't -- you don't see the</p> <p>4 inconsistency?</p> <p>5 A. I don't.</p> <p>6 Q. Do you agree with your definition in</p> <p>7 Paragraph 98 that says that the plain ordinary -- the</p> <p>8 plain and ordinary meaning of BaseT is twisted pair</p> <p>9 Ethernet, per the IEEE 802.3 standards?</p> <p>10 MR. COHEN: Objection, form.</p> <p>11 A. Such as including the ones I mention there,</p> <p>12 yes.</p> <p>13 BY MR. BLUESTONE:</p> <p>14 Q. Those -- so is it your opinion now, sitting</p> <p>15 here today, that twisted pair Ethernet, per the</p> <p>16 standards, is not e.g., but "i.e.", 10BaseT, et cetera?</p> <p>17 A. Well, "i.e." meaning what?</p> <p>18 Q. Well, it says e.g. e.g. means "for</p> <p>19 example," correct?</p> <p>20 A. Right.</p> <p>21 Q. And when people typically use e.g., they</p> <p>22 mean it not in a limiting fashion --</p> <p>23 A. Okay.</p> <p>24 Q. -- but rather, as a -- an exemplary</p> <p>25 fashion; meaning, there could be more. Right?</p>
<p style="text-align: right;">Page 143</p> <p>1 Ethernet, and it is not BaseT, it's Base5. All right?</p> <p>2 I mean, there's various -- Base means baseband and T</p> <p>3 means twisted pair, and there's a series of those</p> <p>4 standards which are all backwards compatible with each</p> <p>5 other, of which 1Base5 is not one.</p> <p>6 Q. Well, your definition at Paragraph 98 is</p> <p>7 that the ordinary meaning is twisted pair Ethernet, per</p> <p>8 the 802.3 standards.</p> <p>9 A. And then I -- and then I list them.</p> <p>10 Q. You list e.g. e.g. means "for example,"</p> <p>11 correct?</p> <p>12 A. Right. And those are all the ones I know</p> <p>13 of.</p> <p>14 Q. Okay. Well, just because you don't know of</p> <p>15 all of them, couldn't there be other twisted pair</p> <p>16 Ethernet standards that apply to your definition?</p> <p>17 MR. COHEN: Objection, form.</p> <p>18 A. Again, but it's not called BaseT. It's</p> <p>19 very obvious to one with the ordinary skill in the art</p> <p>20 what BaseT means, in my opinion.</p> <p>21 BY MR. BLUESTONE:</p> <p>22 Q. I understand what you're saying now, but</p> <p>23 it's at odds with what it says in Paragraph 98. Do you</p> <p>24 see that?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 145</p> <p>1 A. Okay, that's not the fashion I mean in</p> <p>2 here. I mean, specifically, those three are the ones.</p> <p>3 Now, there -- there may be more coming, but they will</p> <p>4 have BaseT in the name.</p> <p>5 Q. So what matters is whether BaseT is in the</p> <p>6 name?</p> <p>7 A. That's why they call them BaseT, yeah.</p> <p>8 Because it's --</p> <p>9 Q. So if I -- if I come up with a standard of</p> <p>10 1 BaseT-5 now it's BaseT? If I rename it to BaseT-5,</p> <p>11 now it would read on it?</p> <p>12 MR. COHEN: Objection, form.</p> <p>13 A. I don't think that's going to happen. I</p> <p>14 don't think that you'd be as interested in 1 Base</p> <p>15 anything, to be honest.</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. But if they did rename it as 1 BaseT-5,</p> <p>18 then it would fit in this definition?</p> <p>19 MR. COHEN: Objection, form.</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. What if I have BaseT -- a thousand BaseT</p> <p>22 and it turns out it's actually using co-ax. Is that</p> <p>23 going to be okay?</p> <p>24 A. Well, then it wouldn't be BaseT.</p> <p>25 Q. Why not?</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. Because the T means twisted pair.</p> <p>2 Q. Where is that in your report?</p> <p>3 A. Based -- it's commonly known by those of</p> <p>4 ordinary skill in the art that Base is baseband, the T</p> <p>5 is twisted pair.</p> <p>6 Q. So in Paragraph 104, you say BaseT Ethernet</p> <p>7 is known and described in at least --</p> <p>8 A. Right.</p> <p>9 Q. -- 10BaseT, a hundred BaseT-X and a</p> <p>10 thousand BaseT. You don't mean that to be limited to</p> <p>11 just those three; right?</p> <p>12 A. Well, they're working on higher speed ones.</p> <p>13 Q. Well, why would a higher speed one have any</p> <p>14 relevance to these -- these claims asserted here?</p> <p>15 A. It doesn't.</p> <p>16 Q. Why not?</p> <p>17 A. Because the higher speed one doesn't exist</p> <p>18 yet. I mean, it might some day, but it doesn't now.</p> <p>19 Q. Well, you could already have something like</p> <p>20 10 gig BaseT already, couldn't you? I guess, as we sit</p> <p>21 here today, that's something that's in the works;</p> <p>22 right?</p> <p>23 A. Right, it is, yes.</p> <p>24 Q. And is that something that would be</p> <p>25 encompassed in the meaning of BaseT?</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Right.</p> <p>2 Q. Standards that are later developed, like 10</p> <p>3 gig BaseT, are they included, or not?</p> <p>4 A. Well, they are BaseT Ethernet and they use</p> <p>5 essentially the same type of cable, so what would work</p> <p>6 in terms of the communication technique discussed in</p> <p>7 these patents, what would work here would likely work</p> <p>8 there, too, but they -- they don't exist yet.</p> <p>9 Presumably, that's high-speed stuff, so, you know,</p> <p>10 things -- things that aren't out there, you know, I --</p> <p>11 I'm not that concerned about right now. I was worried</p> <p>12 about what existed at the time of the application.</p> <p>13 Q. And 1Base5 existed at the time of the</p> <p>14 application, though, and it is twisted pair.</p> <p>15 A. It's twisted pair, but it's not BaseT.</p> <p>16 Q. Because it doesn't use the words BaseT or</p> <p>17 because it's not twisted pair?</p> <p>18 A. Because it's not called BaseT.</p> <p>19 Q. So based -- so your opinion on what BaseT</p> <p>20 means depends solely on the name and use of BaseT in</p> <p>21 it, not necessarily the features?</p> <p>22 MR. COHEN: Objection, form.</p> <p>23 A. No, not at all. The name describes the</p> <p>24 features. I mean, you put -- if it was called BaseT,</p> <p>25 it wouldn't be working on fiber or co-ax, or something.</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Potentially, yes.</p> <p>2 Q. Well, what would you need to know? You</p> <p>3 said potentially. Yes or no?</p> <p>4 A. I believe so. I mean, I'd want to look at</p> <p>5 it, but I ...</p> <p>6 Q. But at the time of the patents, their</p> <p>7 priority dates --</p> <p>8 A. Right --</p> <p>9 Q. -- the applications being filed --</p> <p>10 A. -- those were not -- that was not, no.</p> <p>11 Q. So which way -- which way does it go? Does</p> <p>12 it -- is it limited just to the ones that they knew</p> <p>13 about or could it be encompassed to ones that are</p> <p>14 coming up later in the future?</p> <p>15 A. Well, certainly at the time, in the '98-'99</p> <p>16 time frame, 10BaseT and a hundred BaseT were out and</p> <p>17 well-known, a thousand BaseT was about to be issued and</p> <p>18 had been widely discussed in the press, so everyone</p> <p>19 knew about that, too. So the reason I picked those is</p> <p>20 because those are the ones that were known at the time</p> <p>21 of the application.</p> <p>22 Q. Okay. So these three standards, you say,</p> <p>23 fit into the definition of BaseT. The predecessor</p> <p>24 twisted pair standards, like 1Base5, you would say is</p> <p>25 not included in it?</p>	<p style="text-align: right;">Page 149</p> <p>1 It would be Ethernet on twisted pair.</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. Does the patent have any disclosure beyond</p> <p>4 using twisted pair Ethernet?</p> <p>5 MR. COHEN: Objection, form, beyond the</p> <p>6 scope of the deposition.</p> <p>7 A. "Disclosure" meaning?</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. Is there anywhere in any of the common</p> <p>10 specifications where they contemplate the patent</p> <p>11 relating to an Ethernet protocol that is using</p> <p>12 something other than twisted pair?</p> <p>13 MR. COHEN: Same objections.</p> <p>14 A. Protocol? Other than twisted pair? I</p> <p>15 don't believe so.</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. So we're already starting from the</p> <p>18 framework where we know we're talking about just</p> <p>19 twisted pair. How does it make any difference whether</p> <p>20 it's now using BaseT or not? How is that inventive?</p> <p>21 MR. COHEN: Objection, form, beyond the</p> <p>22 scope of the deposition.</p> <p>23 A. I'm sorry. How is what?</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. Well, presumably when we are adding the</p>

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<p style="text-align: right;">Page 150</p> <p>1 word BaseT, we're changing the meaning of the claim in 2 some way. It's not just Ethernet now. Now it's BaseT 3 Ethernet. 4 A. Right. 5 Q. How does that have any effect, at the end 6 of the day, on whether you've added the term BaseT or 7 not? 8 MR. COHEN: Objection, form, beyond -- 9 A. Well, because -- 10 MR. COHEN: Wait. Wait. Wait. Let me 11 finish my objection. 12 THE WITNESS: I'm sorry. 13 MR. COHEN: Yeah. Objection, form, beyond 14 the scope of the deposition. 15 THE WITNESS: Okay. Now, the question 16 again? 17 BY MR. BLUESTONE: 18 Q. How does it have any effect, at the end of 19 the day, as to whether or not the claims incorporate 20 the word Base; capital B, lower case a, lower case s, 21 lower case e, capital T? 22 MR. COHEN: Same objections. 23 BY MR. BLUESTONE: 24 Q. How does that have any effect on what the 25 claim scope should mean?</p>	<p style="text-align: right;">Page 152</p> <p>1 at hand is to try and figure out what these claim terms 2 mean. 3 A. Right. 4 Q. Like, the fight between the parties right 5 now is, to a person of ordinary skill in the art, what 6 does this mean? And the claims are being changed to 7 add in BaseT. You see that; right? Some claims don't 8 have BaseT and some claims do. Correct? 9 A. Right. 10 Q. What is the effect to any of the claimed 11 inventions when you add BaseT? 12 MR. COHEN: Objection, form, beyond the 13 scope of the deposition. 14 A. Yeah, I'm -- I'm not sure what you're 15 getting at, at all, there. 16 BY MR. BLUESTONE: 17 Q. Well -- 18 A. I think my -- my -- my claim construction 19 issue was that -- that this is what BaseT means to one 20 of ordinary skill in the art and ... 21 Q. But -- okay. But the claim, for example, 22 using BaseT -- capital B, lower case a-s-e, is not even 23 the way you would present it in the IEEE standard, is 24 it? 25 MR. COHEN: Objection, form.</p>
<p style="text-align: right;">Page 151</p> <p>1 MR. COHEN: Same objections. 2 A. Because it's meant to work with equipment 3 that meets those standards, because they have 4 characteristic -- certain characteristics, such as 5 working on twisted pair and the use of pairs and the 6 modular jack, and so on. 7 BY MR. BLUESTONE: 8 Q. Okay. So what are the features of 1Base5 9 that make it not using twisted pair and not using a 10 modular jack or something else? 11 A. I -- I -- I don't recall really what. I 12 don't. 13 Q. So is it possible that 1Base5 shouldn't be 14 included in your definition of BaseT? 15 MR. COHEN: Objection, form. 16 A. I think if there's any 1Base5 equipment 17 still out there, you know, we might be willing to just 18 let it slide. You know, I don't know. 19 BY MR. BLUESTONE: 20 Q. What's that? 21 A. I said, we might be just willing to let it 22 slide if there's any 1 Base -- 1Base5 equipment out 23 there. 24 Q. Well, that's all well and good, but we need 25 to go and figure out what is -- I mean, the -- the task</p>	<p style="text-align: right;">Page 153</p> <p>1 A. Do you mean because of the capitalization? 2 BY MR. BLUESTONE: 3 Q. Yeah. 4 A. I think anyone would know what that means. 5 Q. Yeah, but we're already taking a step here. 6 Let me put it this way: 7 Is there any instance in the IEEE standard 8 where it defines any group of protocols as being BaseT, 9 either capitalized or using lower-case letters? 10 A. Well, it defines specific ones as being 11 BaseT, because it's in the title of the standard. 12 Q. Well, it doesn't define anything as being 13 BaseT, in and of itself, does it? 14 MR. COHEN: Objection, form. 15 A. Well, if the standard has BaseT in the 16 name, I think most people would agree it's BaseT 17 Ethernet. 18 BY MR. BLUESTONE: 19 Q. Well, and I showed you the section in your 20 book. There's nothing in your book that said these are 21 a compilation of BaseT networks, does it? 22 MR. COHEN: Objection, form. 23 A. I -- I -- I don't think so, but I don't 24 know what you're getting at. 25 BY MR. BLUESTONE:</p>

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<p style="text-align: right;">Page 154</p> <p>1 Q. Well, the IEEE standard is going to go and</p> <p>2 say, This is 1Base5 and give an explanation of what</p> <p>3 1Base5 is. What is the significance of the 5; do you</p> <p>4 know?</p> <p>5 A. I actually don't remember.</p> <p>6 Q. Okay.</p> <p>7 A. That was a long time ago.</p> <p>8 Q. But presumably, it has some significance;</p> <p>9 right?</p> <p>10 A. Probably, although I don't recall what.</p> <p>11 Q. Okay. What's the significance of the</p> <p>12 prefix number 1 or 10, et cetera?</p> <p>13 A. That's typically the speed in megabits.</p> <p>14 Q. Okay.</p> <p>15 A. So 10 megabit, a hundred megabit, a</p> <p>16 thousand megabit.</p> <p>17 Q. Is there anything in the IEEE standard that</p> <p>18 says, We have a category of networks that we are</p> <p>19 calling BaseT?</p> <p>20 A. Well, if you just get a list of the IEEE</p> <p>21 standards, you will see the ones that are called BaseT.</p> <p>22 Q. Yes, you will see certain ones with BaseT.</p> <p>23 I concede that point.</p> <p>24 Is there anything in the IEEE standards</p> <p>25 that defines BaseT without a prefix number or something</p>	<p style="text-align: right;">Page 156</p> <p>1 this moment forward. I'm going to sell my products and</p> <p>2 I'm going to call them 10 Base-X and IEEE is going to</p> <p>3 agree with me and that's what we're going to call them.</p> <p>4 Are we no longer reading onto the scope of</p> <p>5 the claims in any way?</p> <p>6 MR. COHEN: Objection, form.</p> <p>7 A. I would have to study that in more detail.</p> <p>8 My guess is that it wouldn't matter, but I would have</p> <p>9 to study and consider that more to give you a</p> <p>10 definitive opinion.</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. Okay. So you would agree with me, though,</p> <p>13 that the standard doesn't use BaseT as it is recited in</p> <p>14 the claim; right? It doesn't use capital B, lower case</p> <p>15 a, lower case s, lower case e, capital T, altogether.</p> <p>16 That's not how it's used in the IEEE standard; right?</p> <p>17 MR. COHEN: Objection, form.</p> <p>18 A. It's typically all upper case.</p> <p>19 BY MR. BLUESTONE:</p> <p>20 Q. Right. So there's a difference; correct?</p> <p>21 A. There's a difference in capitalization,</p> <p>22 yes.</p> <p>23 Q. Okay. Is there anything in -- well, one of</p> <p>24 the things you mention here in Paragraph 98 is a</p> <p>25 hundred Base-TX. It's not BaseT, it's Base-TX. What</p>
<p style="text-align: right;">Page 155</p> <p>1 else?</p> <p>2 A. I -- I don't know offhand. There are other</p> <p>3 things in the literature that explain what it means.</p> <p>4 Q. Okay. So if, all of a sudden, they decided</p> <p>5 now to -- in the next iteration of the 802.3 standards,</p> <p>6 decide that they don't want to use the letter "T"</p> <p>7 anymore and they're going to call it "X," so now it's</p> <p>8 10 Base X, the claims -- the claims would not encompass</p> <p>9 those standards; right?</p> <p>10 MR. COHEN: Objection, form, beyond the</p> <p>11 scope of the deposition.</p> <p>12 A. Well, if they just -- you're saying if they</p> <p>13 changed the name?</p> <p>14 BY MR. BLUESTONE:</p> <p>15 Q. Yeah.</p> <p>16 A. Well, the old documents would still be</p> <p>17 around and they would still be compatible with them and</p> <p>18 all the vendors would still say, "This is IEEE blah,</p> <p>19 blah, blah, blah, which is also 10BaseT."</p> <p>20 Q. Okay.</p> <p>21 A. So I think these patents would have long</p> <p>22 since expired before that name passed out of usage.</p> <p>23 Q. Well, since we're dealing with, you know,</p> <p>24 our crazy hypotheticals, it has come down from above</p> <p>25 that everything will now be Base-X and not BaseT, from</p>	<p style="text-align: right;">Page 157</p> <p>1 does the "X" stand for in TX?</p> <p>2 A. Okay, there were several varieties of a</p> <p>3 hundred BaseT. TX is the most commonly implemented</p> <p>4 one, but there's several flavors of it.</p> <p>5 Q. But it's not BaseT anymore. Now it's</p> <p>6 Base-TX. How is that a BaseT?</p> <p>7 A. It's -- it's still BaseT.</p> <p>8 Q. So all I need is the letters B-A-S-E and T</p> <p>9 together, and it reads on the claim?</p> <p>10 MR. COHEN: Objection, form. Beyond the</p> <p>11 scope of the deposition.</p> <p>12 A. I ... reads on the scope of the claim ...</p> <p>13 I -- I -- I -- I am inclined to disagree with that, but</p> <p>14 I would have to think it through much more thoroughly</p> <p>15 to give you a definitive opinion.</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. Well, the problem that we have here is,</p> <p>18 you've given a declaration as what you said the plain</p> <p>19 and ordinary meaning is.</p> <p>20 A. Uh-huh.</p> <p>21 Q. This is my opportunity here to ask you</p> <p>22 questions on -- to clarify what you mean by this.</p> <p>23 A. Right. Right.</p> <p>24 Q. And I'm truly not trying to be difficult in</p> <p>25 any way, but I'm trying to understand why 1Base5 is</p>

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<p style="text-align: right;">Page 158</p> <p>1 twisted pair, but it isn't encompassed.</p> <p>2 I don't understand what the universe of</p> <p>3 BaseT would encompass. Can you explain that to me?</p> <p>4 How do I know what is and isn't BaseT?</p> <p>5 A. Well, I think one of ordinary skill in the</p> <p>6 art does know. All right?</p> <p>7 Q. Well, the members of the jury sitting</p> <p>8 there, who are going to decide whether there is</p> <p>9 infringement or not, are not necessarily persons of</p> <p>10 ordinary skill in the art, so we've got to go tell them</p> <p>11 what it means. Right?</p> <p>12 A. Right.</p> <p>13 Q. What, to a person of ordinary skill in the</p> <p>14 art, does BaseT encompass and not encompass?</p> <p>15 A. At the time of the invention, it</p> <p>16 encompassed 10BaseT, a hundred BaseT and a thousand</p> <p>17 BaseT.</p> <p>18 Q. Why?</p> <p>19 A. Because those were the BaseT standards that</p> <p>20 were in addition -- that were in existence or about to</p> <p>21 come in existence, that everyone knew about.</p> <p>22 Q. But even if it's about to come into</p> <p>23 existence, it can still be changing. It hasn't been</p> <p>24 adopted yet. Right?</p> <p>25 A. Right, but everyone knew it was coming, so</p>	<p style="text-align: right;">Page 160</p> <p>1 take five or are you on one topic?</p> <p>2 MR. BLUESTONE: Yeah. This won't take that</p> <p>3 much longer. Can we go, like, 5 or 10 minutes to wrap</p> <p>4 this up?</p> <p>5 MR. COHEN: No problem.</p> <p>6 MR. BLUESTONE: Thanks.</p> <p>7 BY MR. BLUESTONE:</p> <p>8 Q. There's a point in which the</p> <p>9 patents-in-suit are talking about how you don't want to</p> <p>10 actually affect the network communications that are</p> <p>11 happening over Ethernet.</p> <p>12 A. Right.</p> <p>13 Q. In that instance, whether it's 10BaseT or</p> <p>14 100 BaseT could make a very big difference, couldn't</p> <p>15 it?</p> <p>16 MR. COHEN: Objection, form.</p> <p>17 A. Well, if -- if you do it in the manner that</p> <p>18 works for 10BaseT, then you're going to be okay for all</p> <p>19 the higher frequencies. All right? Because they're</p> <p>20 trying to keep the frequencies lower to stay out of the</p> <p>21 band where the data is. All right?</p> <p>22 BY MR. BLUESTONE:</p> <p>23 Q. Right.</p> <p>24 A. I assume you're talking about the top of</p> <p>25 column 12 there.</p>
<p style="text-align: right;">Page 159</p> <p>1 everyone knew about a thousand BaseT, right.</p> <p>2 Q. Well, I mean, I know that at some point,</p> <p>3 the standard's going to do a new one, too, but that</p> <p>4 doesn't tell me anything. My point is, you're relying</p> <p>5 on the fact that people would know it was going to be</p> <p>6 adopted, not that it was actually adopted; correct?</p> <p>7 MR. COHEN: Objection, form.</p> <p>8 A. It was widely known in the industry, right.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. It was widely known in the industry that,</p> <p>11 at some point, it would be adopted, and when it was</p> <p>12 adopted, it would take in the name BaseT, and because</p> <p>13 it would take in the name BaseT, at some point</p> <p>14 subsequent to the day of its invention, it should be</p> <p>15 encompassed?</p> <p>16 MR. COHEN: Objection, form.</p> <p>17 A. We're talking about BaseT wiring, remember;</p> <p>18 not a BaseT network, per se.</p> <p>19 BY MR. BLUESTONE:</p> <p>20 Q. Okay. Let's go to one of the</p> <p>21 patents-in-suit. Whichever -- pick whichever one you</p> <p>22 want to talk about.</p> <p>23 A. Okay. '012.</p> <p>24 Q. Sure.</p> <p>25 MR. COHEN: Are we at a point where we can</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. That's a good example, actually. Thank you</p> <p>2 very much.</p> <p>3 In column 12, where he's talking about the</p> <p>4 BaseT network, Line 14, isn't it correct that BaseT --</p> <p>5 10BaseT is going to be more forgivable for this</p> <p>6 invention than a hundred BaseT is going to be?</p> <p>7 MR. COHEN: Objection, form, beyond the</p> <p>8 scope of the deposition.</p> <p>9 A. No, I don't think so.</p> <p>10 BY MR. BLUESTONE:</p> <p>11 Q. Isn't a hundred BaseT going to give you</p> <p>12 less flexibility as to the low frequency signal you can</p> <p>13 impress on the line?</p> <p>14 MR. COHEN: Same objections.</p> <p>15 A. No. A hundred BaseT typically would have</p> <p>16 higher frequency components, not lower, so I think if</p> <p>17 you're low enough to go with 10, you'd be okay with a</p> <p>18 hundred.</p> <p>19 BY MR. BLUESTONE:</p> <p>20 Q. But isn't -- isn't the 10BaseT network</p> <p>21 going to be, let's say, more resilient than a hundred</p> <p>22 BaseT?</p> <p>23 MR. COHEN: Objection.</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. It's less -- there's less demands on the</p>

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<p style="text-align: right;">Page 162</p> <p>1 system; right?</p> <p>2 MR. COHEN: Objection, form, beyond the</p> <p>3 scope of the deposition.</p> <p>4 MR. BLUESTONE: So, for example -- let me</p> <p>5 ask it a different way, because it's a very vague</p> <p>6 question.</p> <p>7 BY MR. BLUESTONE:</p> <p>8 Q. 10BaseT is going to allow for, for example,</p> <p>9 more noise on the line than a hundred BaseT will;</p> <p>10 right?</p> <p>11 A. I -- I -- I have no comment on that today.</p> <p>12 I mean, we're getting way, way off into the internal</p> <p>13 workings of Ethernet, as opposed to these patents, and</p> <p>14 the emphasis here is on keeping the frequency low</p> <p>15 enough so it's well under the band being used and ...</p> <p>16 Q. Well, just a couple of more questions and</p> <p>17 then I'll let us take this break.</p> <p>18 A. All right.</p> <p>19 Q. You're an expert in the wiring for Ethernet</p> <p>20 communications; correct?</p> <p>21 A. Mm-hmm.</p> <p>22 Q. And when you go from 10BaseT to a hundred</p> <p>23 BaseT, there's a change in the requirement for the</p> <p>24 wiring; correct?</p> <p>25 A. It went from Cat 3 to Cat 5, yeah.</p>	<p style="text-align: right;">Page 164</p> <p>1 A. I can't think of one offhand.</p> <p>2 Q. And your declaration doesn't cite to any</p> <p>3 instance in which the specification --</p> <p>4 A. No.</p> <p>5 Q. -- would state that?</p> <p>6 Sorry. I think we talked over each other.</p> <p>7 Your declaration doesn't cite to any</p> <p>8 instance in the specification where it states that</p> <p>9 there's any support for BaseT, does it?</p> <p>10 A. No, I don't believe so.</p> <p>11 Q. And your declaration doesn't include any</p> <p>12 citation to any technical literature where BaseT, as it</p> <p>13 is spelled in the claim, is somehow defined?</p> <p>14 A. I don't believe so, no.</p> <p>15 Q. Okay. And there's no citation anywhere in</p> <p>16 which BaseT, under any capitalization or lack of</p> <p>17 capitalization or hyphenation, is defined using</p> <p>18 technical literature; right?</p> <p>19 A. (Indicating) In here?</p> <p>20 Q. In your declaration.</p> <p>21 A. No.</p> <p>22 Q. Your declaration doesn't cite to any</p> <p>23 technical literature as to the meaning of BaseT;</p> <p>24 correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. Why did they impose a difference between</p> <p>2 Cat 3 up to Cat 5?</p> <p>3 A. Because the frequency content is higher and</p> <p>4 Cat 3 did not have adequate high frequency response.</p> <p>5 Q. And your opinion would be that any aspect</p> <p>6 of the invention that relates for 10BaseT would relate</p> <p>7 for any -- a hundred BaseT, anything else?</p> <p>8 MR. COHEN: Objection, form.</p> <p>9 A. Very likely, yeah. I mean, again, if</p> <p>10 there's some particular thing, I would have to study</p> <p>11 that in more detail, but ...</p> <p>12 MR. BLUESTONE: Okay. Why don't we take</p> <p>13 our break now.</p> <p>14 VIDEOGRAPHER: We are off the record at</p> <p>15 2:03 p.m.</p> <p>16 (Break from 2:03 p.m. until 2:13 p.m.)</p> <p>17 VIDEOGRAPHER: We are back on the record at</p> <p>18 2:13 p.m. This is file 4.</p> <p>19 BY MR. BLUESTONE:</p> <p>20 Q. Mr. Baxter, the specification doesn't use</p> <p>21 the term BaseT, does it; just in and of itself, BaseT?</p> <p>22 A. Oh. In and of itself? I don't know. It</p> <p>23 does use 10BaseT on occasion.</p> <p>24 Q. Are you aware of any instance in which the</p> <p>25 specification uses BaseT without the "10" prefix?</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. And if you were aware of something, you</p> <p>2 would have cited to it; correct?</p> <p>3 MR. COHEN: Objection, form.</p> <p>4 A. I -- if I thought I needed to cite to it, I</p> <p>5 would have, yeah.</p> <p>6 BY MR. BLUESTONE:</p> <p>7 Q. Well, sitting here today, you are not aware</p> <p>8 of any technical literature that would define BaseT,</p> <p>9 correct, in and of itself, without the prefix?</p> <p>10 A. Well, yes, I am. Right (indicating).</p> <p>11 Q. What are you pointing to?</p> <p>12 A. This other publication on the front sheet</p> <p>13 of the patent.</p> <p>14 Q. And what does it say that you are referring</p> <p>15 to?</p> <p>16 A. It's the Entertainment and Service Industry</p> <p>17 Recommended Practice for Ethernet Cabling Systems in</p> <p>18 Entertainment and Lighting Applications.</p> <p>19 Q. Okay. And you're saying that that includes</p> <p>20 a definition of BaseT?</p> <p>21 A. It -- it lists 10BaseT, a hundred BaseT, a</p> <p>22 thousand BaseT, and says base means baseband, T means</p> <p>23 twisted pair, yeah.</p> <p>24 Q. It says that in there?</p> <p>25 A. Yep.</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. Okay. And that, you would say, provides a 2 definition for BaseT without a prefix? 3 A. Yes. 4 Q. And that definition is what? 5 A. Base -- well, they list those and they tell 6 you that the Base means baseband, the T means twisted 7 pair, so that's your BaseT. 8 Q. Okay. So BaseT means baseband and twisted 9 pair. And does that include 1Base5? 10 A. And there's -- not in my opinion, no. 11 There's the three specs, 10, a hundred, a thousand, 12 that were known at the time of the invention. 13 Q. So even though you're saying this 14 publication says Base means baseband and T means 15 twisted pair, on the face of the patent, you would say 16 that definition is, nonetheless, too broad, because 17 1Base5 should be included? 18 A. No. They don't include 1Base5. 19 Q. Well, now -- 20 A. It doesn't have a T. 21 Q. Yes. But if BaseT means twisted pair and 22 baseband, isn't 1Base5 encompassed in that? 23 A. No. "BaseT," the "Base" means baseband and 24 the "T" means twisted pair. 25 Q. Right. So BaseT does or does not mean</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. But we talked over each other. I want to 2 make sure the record is clear. 3 It's not -- BaseT isn't satisfied by it 4 merely being baseband twisted pair. You're saying it 5 also has to be baseband twisted pair and use BaseT in 6 the language. 7 A. Right. That's -- that's where the BaseT 8 name came from, was from the title of those 9 specifications. 10 Q. And that distinction is based on simply the 11 naming, not any technical difference between whether 12 it's baseband twisted pair? 13 MR. COHEN: Objection, form. 14 A. Well, I'm sure there are technical 15 differences in 1Base5 and the BaseT specs. I just 16 don't know what they are offhand. 17 BY MR. BLUESTONE: 18 Q. Why are you excluding 1Base5? 19 A. Because it's not BaseT. 20 Q. Because it doesn't use the letters B-A-S-E, 21 -T. It uses B-A-S-E-5? 22 MR. COHEN: Objection, form. 23 A. Right. Just like Base F uses F, and so on. 24 I mean, it's lists. 25 BY MR. BLUESTONE:</p>
<p style="text-align: right;">Page 167</p> <p>1 baseband twisted pair? 2 A. Well, that's -- that's what the BaseT 3 means, and 1Base5 does not have the T, it has a 5, so 4 it's not BaseT. 5 Q. I understand that it doesn't use a T in it. 6 A. Right. 7 Q. But if we start from -- I want to make sure 8 I understand what you are saying. 9 If we say that this publication defines 10 Base to be baseband and T to be twisted pair -- 11 A. Uh-huh. 12 Q. -- then are you saying to me that BaseT 13 means baseband twisted pair? 14 A. That that is what the letters in the title 15 of the Ethernet specs mean. 16 Q. Okay. So putting them together, Base and 17 T -- 18 A. Right. 19 Q. Does BaseT together, as spelled in the 20 claim, mean baseband twisted pair? 21 A. It means the Ethernet BaseT specifications, 22 which are baseband Ethernet on twisted pair. 23 Q. And not only that, it has to actually use 24 BaseT, so 1Base5 is not -- 25 A. That's why they call it BaseT.</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Okay. Well, let's approach it from a 2 different standpoint. 3 If I have a standard that's Base F -- and 4 that means fiber; right? 5 A. Right. 6 Q. -- and all of a sudden I decide, You know, 7 I don't like using Base F. I'm going to use Base 8 exclamation point, because it's so, so, so fast. It 9 still would be a fiber network; right? 10 A. It would. 11 Q. But it wouldn't be Base F anymore, is your 12 point? 13 MR. COHEN: Objection, form. 14 A. Well, but you're making up ridiculous 15 hypotheticals that have not happened, and one of 16 ordinary skill in the art at the time of these 17 inventions knew what BaseT meant, I mean ... 18 BY MR. BLUESTONE: 19 Q. Okay. So again, so if the IEEE -- 20 A. ... and it was not limited to 10BaseT. 21 Q. So if the IEEE working group decides that 22 it doesn't want to get sued anymore by John Osterman 23 and Company, they can get rid of all these patent 24 claims against them by merely agreeing to change the 25 name from BaseT to Base-something, other letter --</p>

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<p style="text-align: right;">Page 170</p> <p>1 MR. COHEN: Objection.</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. -- and they're golden?</p> <p>4 MR. COHEN: Wait. Wait. Objection, form.</p> <p>5 A. I have no opinion on that.</p> <p>6 MR. COHEN: Hang on one second. Objection,</p> <p>7 form, beyond the scope of the deposition.</p> <p>8 A. I have no opinion on that.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. Well, you have an opinion of what BaseT</p> <p>11 means. We've been trying to figure out what that is.</p> <p>12 A. I do, but I'm not a lawyer and I can't tell</p> <p>13 you who could sue what for what reason.</p> <p>14 Q. Okay. Do I avoid the scope of the claims</p> <p>15 if I merely change the name from BaseT to Base</p> <p>16 some-other-letter?</p> <p>17 MR. COHEN: Objection, form, beyond the</p> <p>18 scope of the deposition.</p> <p>19 A. I -- I -- I have not considered that. I</p> <p>20 don't have an opinion. I would have to think that</p> <p>21 through carefully.</p> <p>22 BY MR. BLUESTONE:</p> <p>23 Q. Okay. Now, looking at Paragraph 98, when</p> <p>24 it's saying the plain and ordinary meaning is, namely,</p> <p>25 twisted pair Ethernet per the IEEE 802.3 standards --</p>	<p style="text-align: right;">Page 172</p> <p>1 A. I was using an example, yes.</p> <p>2 Q. But you agree with me that the</p> <p>3 specification makes no mention of a hundred BaseT;</p> <p>4 correct?</p> <p>5 MR. COHEN: Objection, form.</p> <p>6 A. I don't believe that it does.</p> <p>7 BY MR. BLUESTONE:</p> <p>8 Q. And the specification makes no mention of</p> <p>9 100 Base-TX?</p> <p>10 A. I don't believe so.</p> <p>11 Q. The specification makes no mention of any</p> <p>12 thousand BaseT type of network?</p> <p>13 A. What the documents -- it reference -- it</p> <p>14 references many, many documents in the specification</p> <p>15 that reference these things.</p> <p>16 Q. Yes, but the specification, itself, never</p> <p>17 says, "This will work with a thousand BaseT," correct?</p> <p>18 A. No, I don't believe so.</p> <p>19 Q. In fact, a thousand BaseT was not even</p> <p>20 adopted at the time of invention; correct?</p> <p>21 A. It was not, but it was widely known.</p> <p>22 Q. But it wasn't adopted; correct?</p> <p>23 A. Correct.</p> <p>24 Q. And it's not recited anywhere in the</p> <p>25 specification; correct?</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Right.</p> <p>2 Q. -- and then (e.g.) and then it lists three</p> <p>3 standards.</p> <p>4 A. Yes.</p> <p>5 Q. Would you correct your declaration to</p> <p>6 instead of saying e.g., now say "i.e." instead?</p> <p>7 A. I would think about it.</p> <p>8 Q. Well, sitting here today, do you have any</p> <p>9 thoughts on whether it needs to be changed or not?</p> <p>10 A. Well, what I meant to say was that those</p> <p>11 were the three standards that were known at the time of</p> <p>12 the invention, so that's what I would think it would be</p> <p>13 referring to. That's what one of ordinary skill in the</p> <p>14 art at that time would have interpreted BaseT to mean,</p> <p>15 is those three.</p> <p>16 Q. But you have no document -- well, did you</p> <p>17 do any searching to see what BaseT would mean to</p> <p>18 someone other than yourself in forming your opinions?</p> <p>19 A. Well, I've read many things over the years,</p> <p>20 I've talked to many people, and when you say BaseT,</p> <p>21 people know that's what it means. I don't know anyone</p> <p>22 who thinks BaseT means only 10BaseT and nothing else.</p> <p>23 Q. You agree that the only BaseT -- under your</p> <p>24 definition -- network discussed at all in the</p> <p>25 specification is 10BaseT; right?</p>	<p style="text-align: right;">Page 173</p> <p>1 A. Correct.</p> <p>2 Q. And, in fact, my device running 10BaseT,</p> <p>3 that is only operable to run 10BaseT, can't even talk</p> <p>4 to your device that's a hundred BaseT; right?</p> <p>5 MR. COHEN: Objection.</p> <p>6 BY MR. BLUESTONE:</p> <p>7 Q. They're different standards.</p> <p>8 MR. COHEN: Sorry. Objection.</p> <p>9 A. No. They're backward compatible. They can</p> <p>10 all negotiate.</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. You're assuming they're all backward</p> <p>13 compatible. That's what I thought.</p> <p>14 A. Well, the standards are backward</p> <p>15 compatible. If you choose not to implement that</p> <p>16 feature, then that's up to you.</p> <p>17 Q. Sure. So my situation is, basically, I</p> <p>18 have a device that's a legacy device that's only</p> <p>19 10BaseT, and for whatever reason, I've decided to</p> <p>20 create my device that's a hundred BaseT and is not</p> <p>21 backwards compatible to 10BaseT at all. Those two</p> <p>22 devices might as well be speaking French and German.</p> <p>23 They're not talking to each other. Right?</p> <p>24 MR. COHEN: Objection, form.</p> <p>25 A. I see no relevance to anything we're</p>

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<p style="text-align: right;">Page 174</p> <p>1 talking about.</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. Well, they're two totally different</p> <p>4 standards, right, in how they communicate?</p> <p>5 MR. COHEN: Same objection.</p> <p>6 A. No. But I have no opinion on that. This</p> <p>7 is so far off topic, from my view. I have not</p> <p>8 expressed any opinions about anything like that and I</p> <p>9 just don't see how this is even remotely relevant.</p> <p>10 BY MR. BLUESTONE:</p> <p>11 Q. Okay. Well, the patent recites Ethernet.</p> <p>12 Does it or does it not?</p> <p>13 A. Yes.</p> <p>14 Q. And it recites that the connector is used</p> <p>15 for Ethernet communications; correct?</p> <p>16 A. Correct.</p> <p>17 Q. The IEEE standards govern the protocols for</p> <p>18 Ethernet communications; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And the patent makes it very clear that</p> <p>21 it's trying to make sure it puts in a low frequency</p> <p>22 signal that will not interfere with the existing</p> <p>23 communications; correct?</p> <p>24 A. Correct.</p> <p>25 Q. So doesn't it make sense that we have to</p>	<p style="text-align: right;">Page 176</p> <p>1 any difference?</p> <p>2 A. No. That's just a type of BaseT.</p> <p>3 Q. Would you agree -- well, let's move on.</p> <p>4 Let's talk a little bit about the next</p> <p>5 section in your report, "Powered off," from paragraphs</p> <p>6 106 through 114 of Exhibit 1. We were talking about</p> <p>7 the specification a little bit within the context of</p> <p>8 BaseT.</p> <p>9 I want to shift to the discussion on the</p> <p>10 specification, what the patent shows -- patents show</p> <p>11 with respect to remote modules and assets.</p> <p>12 Now, when the patent is talking about</p> <p>13 operational power, being able to be operational --</p> <p>14 A. Mm-hmm.</p> <p>15 Q. -- it's talking solely about the asset that</p> <p>16 they are trying to track, correct, not the remote</p> <p>17 module?</p> <p>18 A. Correct.</p> <p>19 Q. And the remote module can't operate without</p> <p>20 power. It needs power. Correct?</p> <p>21 A. It needs the power that it gets over this</p> <p>22 wire that we're talking about, yes.</p> <p>23 Q. Okay. And the patent makes it clear that</p> <p>24 there's a difference between the asset and the remote</p> <p>25 module in this specification; correct?</p>
<p style="text-align: right;">Page 175</p> <p>1 understand what the constraints are in the system of</p> <p>2 10BaseT versus a hundred BaseT?</p> <p>3 MR. COHEN: Objection, form, beyond the</p> <p>4 scope of the deposition.</p> <p>5 A. Well, they were designed to be backward</p> <p>6 compatible and a hundred BaseT uses higher frequencies,</p> <p>7 not lower frequencies, so for this application, I don't</p> <p>8 believe so.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. And the fact that a hundred Base-TX adds</p> <p>11 the letter X -- so it's not only BaseT now, it's</p> <p>12 Base-TX -- makes no difference?</p> <p>13 A. That -- that's the most common variety.</p> <p>14 Well, it's really the only variety in the marketplace.</p> <p>15 Q. Well, couldn't I say to you: "Wait a</p> <p>16 second. Base-TX doesn't include BaseT because it's not</p> <p>17 BaseT, it's Base-TX. It's different."</p> <p>18 A. Well, you could say whatever you want. I</p> <p>19 wouldn't necessarily agree with it.</p> <p>20 Q. I didn't expect you to agree with me.</p> <p>21 A. Yes.</p> <p>22 Q. I'm trying to understand where we draw the</p> <p>23 line of what becomes BaseT and what isn't.</p> <p>24 So my question is: You're saying it has to</p> <p>25 include BaseT. Does the addition of the letter X make</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Correct.</p> <p>2 Q. And the claimed invention is indifferent to</p> <p>3 whether power is on or off in the asset. It's going to</p> <p>4 operate the same. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, in the specification of the</p> <p>7 patents, the function of drawing different magnitudes</p> <p>8 of DC current is governed solely by the remote module,</p> <p>9 right, not the asset?</p> <p>10 A. Correct.</p> <p>11 Q. And the existing assets are not even going</p> <p>12 to have the capability of drawing different magnitudes</p> <p>13 of DC current; like, for example, a laptop. Correct?</p> <p>14 A. Well, assets that are compatible with this</p> <p>15 technique --</p> <p>16 Q. Go ahead.</p> <p>17 A. -- will.</p> <p>18 Q. I'm sorry?</p> <p>19 A. I mean, I -- I'm not sure what you're</p> <p>20 getting at. No, things that don't implement this will</p> <p>21 not be able to use it.</p> <p>22 Q. Right. And so let's put this in context,</p> <p>23 for example.</p> <p>24 The '260 patent that's incorporated by</p> <p>25 reference, are you familiar with that?</p>

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<p style="text-align: right;">Page 178</p> <p>1 A. Yes.</p> <p>2 Q. The '260 patent is using the existing</p> <p>3 wiring of a laptop, for example; correct?</p> <p>4 A. Mm-hmm.</p> <p>5 Q. There's nothing you need to do to the asset</p> <p>6 to have it be able to determine whether there's a</p> <p>7 discontinuity in the current loop; correct?</p> <p>8 A. I believe that's true, yes.</p> <p>9 Q. But now, when we talk about the</p> <p>10 patents-in-suit here, it's doing something different;</p> <p>11 right? You need this remote module to function;</p> <p>12 correct?</p> <p>13 A. You need the remote module, but it can be</p> <p>14 incorporated into the equipment.</p> <p>15 Q. Okay. But when those two things are</p> <p>16 incorporated in -- so we take remote module and asset</p> <p>17 and we put them together in one box, draw a box around</p> <p>18 it -- you wouldn't say that that box is powered off,</p> <p>19 right, because at least part of the box is drawing</p> <p>20 current?</p> <p>21 A. I -- I would say it's -- it's powered off.</p> <p>22 If it can't -- if it doesn't have operating power to do</p> <p>23 its normal functions, it would generally be considered</p> <p>24 to be powered off.</p> <p>25 Q. How do I determine what the normal</p>	<p style="text-align: right;">Page 180</p> <p>1 A. The asset.</p> <p>2 Q. Oh. The asset.</p> <p>3 A. Yeah, the --</p> <p>4 Q. Right.</p> <p>5 A. Right.</p> <p>6 Q. So we have a box -- our little imaginary</p> <p>7 hypothetical: We have a box in which there's a remote</p> <p>8 module in the box and there is an asset in the box.</p> <p>9 A. Right.</p> <p>10 Q. And you're saying the asset could be</p> <p>11 powered on or powered off, it doesn't matter, correct,</p> <p>12 to the invention?</p> <p>13 MR. COHEN: Objection, form.</p> <p>14 A. I believe that's true, yes.</p> <p>15 BY MR. BLUESTONE:</p> <p>16 Q. Okay. But for the remote module to do</p> <p>17 something, it needs to draw power; correct?</p> <p>18 A. Right. And the user would not say that</p> <p>19 this thing is powered up because the remote module is</p> <p>20 drawing its little bit of power.</p> <p>21 Q. They wouldn't say that the asset is powered</p> <p>22 up?</p> <p>23 A. Right.</p> <p>24 Q. But what about that little sender tag that</p> <p>25 you stuck on your computer. That would be powered up;</p>
<p style="text-align: right;">Page 179</p> <p>1 functions are?</p> <p>2 A. Well, if it's a PC, if you can type things</p> <p>3 make things happen and run programs, then that has its</p> <p>4 power. If it's off, you can't. I mean, if it's a</p> <p>5 television, if you can watch a program, it's on.</p> <p>6 Q. Mm-hmm.</p> <p>7 A. If you can't, it's off.</p> <p>8 Q. But that's only part of that box you're</p> <p>9 talking about; right? You're only talking about part</p> <p>10 of the box that we just drew, that was the asset. What</p> <p>11 about the part of the box at the remote module? It</p> <p>12 needs operating power; right?</p> <p>13 A. Part of the box, the remote module, gets a</p> <p>14 little bit of power over the wire from the central</p> <p>15 module without disturbing the operation of the rest of</p> <p>16 the box.</p> <p>17 Q. The rest of it. Of the asset, you mean?</p> <p>18 A. Right.</p> <p>19 Q. So the -- so in this hypothetical that</p> <p>20 you're talking about, the remote module is getting</p> <p>21 power, but the asset is not; correct?</p> <p>22 A. Potentially. It could be. It could be, it</p> <p>23 could not be. I mean, the asset can be powered or</p> <p>24 unpowered.</p> <p>25 Q. The remote module?</p>	<p style="text-align: right;">Page 181</p> <p>1 right?</p> <p>2 A. Well, but as I said before, it doesn't have</p> <p>3 to be a sender tag. You can build it in, much like you</p> <p>4 build power Ethernet into your unit --</p> <p>5 Q. Okay.</p> <p>6 A. -- right? And the user doesn't know</p> <p>7 there's two things. Right?</p> <p>8 Q. Sure.</p> <p>9 A. They just know they plug in and the thing's</p> <p>10 off.</p> <p>11 Q. So it depends on what your definition of</p> <p>12 operating power pertains to, then, doesn't it?</p> <p>13 A. Yes, operating power for the equipment.</p> <p>14 Q. Well, wait a second. We have your box</p> <p>15 scenario, where they're -- well, they're integrated</p> <p>16 together. It may lack operating power for the purpose</p> <p>17 of sending an email, but it would have operating power</p> <p>18 for the purpose of the asset being tracked; correct?</p> <p>19 A. Which is not typically called operating</p> <p>20 power. It's operating power for the equipment to do</p> <p>21 what the equipment does. It's not -- much like when</p> <p>22 your TV is, you know, off: There's still a little bit</p> <p>23 of it powered so when you hit the power button on your</p> <p>24 remote control, it can turn the rest of it on. So we</p> <p>25 routinely call that TV turned off, even though part of</p>

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<p style="text-align: right;">Page 182</p> <p>1 it is still powered. It's just not the part that you 2 want to look at. 3 Q. For whatever it's worth, my TV says 4 Stand-by Mode, but I don't know if that helps or 5 affects us at all. I don't -- okay. 6 Let's take your definition of operating 7 power. Without its operating power is your definition 8 of powered off. Operating power, under your 9 construction, would apply to the functions recited in 10 the claim; correct? 11 MR. COHEN: Objection, form. 12 A. Which claim are you talking about? 13 BY MR. BLUESTONE: 14 Q. Well, let's do '107, if you can put that in 15 front of you. Whenever you're ready. Actually, let's 16 do Claim 104 of the '107, Page 4 of Exhibit 6, because 17 that's using this language. 18 A. If I could find Exhibit 6, I'd be in 19 business. I'm having trouble locating Exhibit 6 now. 20 Q. That's just the one with the reproduced 21 claims. 22 A. Yeah, I -- I know. 23 Q. Take your time. 24 A. Oh. There it is. Page 4? 25 Q. Yes. Let's do that, and then why don't you</p>	<p style="text-align: right;">Page 184</p> <p>1 piece of Ethernet terminal equipment, that's in that 2 first line of the claim, is now powered off? 3 A. I believe so, yes. 4 Q. Okay. And would you agree with me that 5 this claim explicitly defines what the piece of 6 Ethernet terminal equipment is? 7 MR. COHEN: Objection, form. 8 A. No, I wouldn't. 9 BY MR. BLUESTONE: 10 Q. Well, do you know what a preamble of a 11 patent claim is? 12 A. Right. But it says comprising -- 13 Q. Yes. 14 A. -- which means it has to have all this. 15 Q. Correct. 16 A. And it would typically have other things 17 like a PC, or something, which is actually the 18 equipment. 19 Q. Are you saying that there are other 20 limitations uncited in the claim that are required? 21 A. I'm not saying they're limitations. I'm 22 saying if -- if all you have is a piece of Ethernet 23 terminal equipment which can report information about 24 itself, it's not really a useful thing. Typically, you 25 would have a piece of Ethernet terminal equipment which</p>
<p style="text-align: right;">Page 183</p> <p>1 also, so we can go back and forth, pull open Exhibit 3, 2 which is the '107 patent, and get claim 103, because 3 that's the other instance where we are going to see 4 those for this patent. 5 A. 107. 6 Q. And it's column 22. The -- basically, the 7 last page of that exhibit is going to have that 8 language. 9 A. Okay. 10 Q. Okay. So let's start with Claim 103. 11 A. 103? 12 Q. Yeah. Probably the shortest one. 13 A. Okay. 14 Q. 103 recites the piece of Ethernet terminal 15 equipment, of a variety of other claims, but it 16 modifies it by saying, wherein the piece of Ethernet -- 17 I think there's a little typo there, but -- the piece 18 of Ethernet terminal equipment is a piece of powered 19 off Ethernet terminal equipment. 20 A. Right. 21 Q. Okay. Now let's go back to Claim 1 of the 22 '107 patent. 23 A. Claim 1 of the '107. Okay. 24 Q. Now, would you agree with me that all Claim 25 103 is saying is adding the limitation that now this</p>	<p style="text-align: right;">Page 185</p> <p>1 does some useful function, like a PC or a monitor, and 2 can also do this. 3 Q. Okay. But I think we have to be governed 4 by the rules of patent claims here. "Claim is a piece 5 of Ethernet terminal equipment comprising." 6 A. Right. 7 Q. We agreed that it says that; correct? 8 A. We do. 9 Q. And we agree that the claim requires that 10 it has an Ethernet connector; correct? 11 A. Yes. 12 Q. And the elements of the Ethernet connector 13 is defined. Agreed? 14 A. Right. 15 Q. We agreed that this piece of Ethernet 16 terminal equipment has to also have at least one path 17 coupled across and the rest of those structural 18 limitations; correct? 19 A. Right. 20 Q. And then we agreed that that piece of 21 Ethernet terminal equipment also has to, under your 22 definition, be designed or configured to perform the 23 functions starting from Line 18 through Line 25. 24 A. Right. 25 Q. We agree to all that; correct?</p>

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<p style="text-align: right;">Page 186</p> <p>1 A. Right.</p> <p>2 Q. We also agree that there is nothing else</p> <p>3 recited in this claim that needs to be present;</p> <p>4 correct?</p> <p>5 MR. COHEN: Objection, form.</p> <p>6 A. Well, it doesn't need to be, but it</p> <p>7 essentially always would be.</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. All right. What is this invisible thing</p> <p>10 that needs to be -- that would be --</p> <p>11 A. It's not invisible. This is the invisible</p> <p>12 thing. The main thing is the PC; right?</p> <p>13 Q. So --</p> <p>14 A. And there's a little invisible thing in</p> <p>15 there that does this. All right?</p> <p>16 Q. Are you saying that the Claim 1 requires a</p> <p>17 PC?</p> <p>18 A. No, but it's a piece of Ethernet terminal</p> <p>19 equipment, and a piece of Ethernet terminal equipment</p> <p>20 is generally a PC or something that does some useful</p> <p>21 thing, communicates information, and in addition, it</p> <p>22 also is going to do this. Right?</p> <p>23 Q. But those things that you say -- the useful</p> <p>24 thing that it's supposed to do about communicating</p> <p>25 information, that is nowhere in this claim; correct?</p>	<p style="text-align: right;">Page 188</p> <p>1 now it's drawing power, like the remote module;</p> <p>2 correct?</p> <p>3 A. Right, but it wasn't -- it was powered off</p> <p>4 prior to that, all right? And you started doing this</p> <p>5 when it was powered off and the bulk of it is still</p> <p>6 powered off. As far as the user's concerned, it's off.</p> <p>7 Q. There's nothing in this claim that talks</p> <p>8 about the user's perspective; right?</p> <p>9 A. In this claim, no.</p> <p>10 Q. It never says, "Wherein a user perceives it</p> <p>11 to be powered off," right?</p> <p>12 A. It says -- well, are you talking about '103</p> <p>13 now?</p> <p>14 Q. Yeah.</p> <p>15 A. It does not, but it's powered off.</p> <p>16 Q. It just says, "where the piece of Ethernet</p> <p>17 terminal equipment, as claimed, is powered off." And</p> <p>18 as ridiculous as it may sound, the plain meaning of the</p> <p>19 claim makes no sense. It says powered off, but all</p> <p>20 this stuff needs to draw power. Right?</p> <p>21 MR. COHEN: Objection, form.</p> <p>22 A. I don't -- I don't read it that way at all.</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. Well, what -- what you're -- what I think I</p> <p>25 understand what you're doing, and correct me if I'm</p>
<p style="text-align: right;">Page 187</p> <p>1 A. Correct.</p> <p>2 Q. And your interpretation of powered off</p> <p>3 means it's lacking its operating power; correct?</p> <p>4 A. Correct.</p> <p>5 Q. Or without its operating power; correct?</p> <p>6 Doesn't "without its operating power" have to apply to</p> <p>7 the limitations that are in the claim and not some</p> <p>8 other things that are unrecited?</p> <p>9 A. Well, it applies to Ethernet terminal</p> <p>10 equipment, which would apply to all of it, whatever's</p> <p>11 there, and this is unpowered until you send the DC</p> <p>12 current across the at least one path --</p> <p>13 Q. Okay.</p> <p>14 A. -- and then this little bit of circuitry is</p> <p>15 powered and it can do what it does.</p> <p>16 Q. Right. So these claim limitations, these</p> <p>17 functions can't be done if the structure, as claimed,</p> <p>18 is powered off?</p> <p>19 A. Sure they can.</p> <p>20 Q. How is it supposed to draw DC current flow</p> <p>21 or DC current if it's powered off?</p> <p>22 A. Because you put a small voltage across</p> <p>23 those first and second conductors and give it just</p> <p>24 enough juice to do that.</p> <p>25 Q. Right. And now you've given it juice and</p>	<p style="text-align: right;">Page 189</p> <p>1 wrong, is: You're saying powered off doesn't apply to</p> <p>2 any of the -- any of the limitations actually in the</p> <p>3 claim. Powered off applies to some other functions</p> <p>4 that are unrecited.</p> <p>5 MR. COHEN: Objection, form.</p> <p>6 A. Powered off applies to the overall piece of</p> <p>7 Ethernet terminal equipment.</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. Including --</p> <p>10 A. And --</p> <p>11 Q. Including the part of it that is to draw</p> <p>12 different magnitudes of DC current flow?</p> <p>13 A. And that could certainly be powered off</p> <p>14 when you start, and you put that little bit of current</p> <p>15 on and the unit, itself, is still not powered up; just</p> <p>16 this little bit of circuitry here.</p> <p>17 Q. But there's no way you could ever have a</p> <p>18 piece of Ethernet terminal equipment configured or</p> <p>19 designed to draw different magnitudes of DC current</p> <p>20 flow via the at least one path and, at the same time,</p> <p>21 be powered off; isn't that correct?</p> <p>22 MR. COHEN: Objection, form.</p> <p>23 A. Well, that -- obviously, it depends on how</p> <p>24 you interpret powered off. Powered off typically means</p> <p>25 you hit the on/off button, you pull the plug out of the</p>

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<p style="text-align: right;">Page 190</p> <p>1 wall, whatever it may be. 2 BY MR. BLUESTONE: 3 Q. Okay. There's nothing in the claim that 4 talks about an AC adapter; correct? 5 A. No. 6 Q. And there's nothing in the plain meaning of 7 Ethernet terminal equipment that requires two different 8 powers sources; correct? 9 A. No, but I think one of ordinary skill in 10 the art knows what a piece of Ethernet terminal 11 equipment looks like when it's powered off. 12 Q. That's fine. But there's nothing in 13 plain -- well, first of all, Ethernet terminal 14 equipment is not used in the specification; correct? 15 A. I'm sorry? I'm not following you. 16 Q. If we go through the patent applications, 17 as filed, you're never going to see the phrase Ethernet 18 terminal equipment. It talks about a central module, 19 it talks about a remote module, but Ethernet terminal 20 equipment isn't there. 21 A. Well, but it shows how to use -- for 22 instance, with a hub and PC, and says that it works 23 with Ethernet, so -- 24 Q. Okay. 25 A. -- I would say that's Ethernet equipment.</p>	<p style="text-align: right;">Page 192</p> <p>1 about elements that are drawing power. Why would 2 powered off not apply to those specific claim 3 limitations that are directed towards the supplying of 4 power? Why would it be something else that's 5 unrecited? 6 A. Well, I don't think that's the way it would 7 be interpreted, in light of the specification. I mean, 8 when -- when you have, for instance, a computer asset 9 of some kind, with one of these little tags on the 10 outside, and you move that tag inside and consider it 11 part of the equipment, it's still powered separately 12 over that little thing and the equipment would be 13 powered off when it's not working, so the fact that you 14 have sent a little trickle of current through this 15 small module down here would not be apparent to anyone. 16 It would not be typically considered a powered on unit 17 at that stage. 18 Q. We've already agreed that nothing in the 19 claim talks about how an end user would perceive it; 20 correct? 21 A. Right. But how one of ordinary skill in 22 the art would perceive a powered off piece of 23 equipment, yes. 24 Q. Okay. In your example in which they are 25 combined together, as a unit together, is it powered</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. But my question is very narrow: The Ether 2 -- the specification does not use, quote, Ethernet 3 terminal equipment. 4 A. That exact word? 5 Q. Yes. 6 A. I don't recall offhand, but it clearly 7 talks about Ethernet equipment, hubs and PCs, that 8 communicate over an Ethernet network. 9 Q. Okay. A person of ordinary skill in the 10 art, looking at the term Ethernet terminal equipment, 11 doesn't come to the conclusion that it requires or even 12 suggests two different power sources; correct? 13 A. Not necessarily, no. 14 Q. And the claim is reciting, in essence, a 15 power source for it; right? There is a power source 16 that's in essence in Claim 1 of the '107 patent? 17 MR. COHEN: Objection, form. 18 A. Oh, the -- the -- 19 BY MR. BLUESTONE: 20 Q. The drawing DC current is essentially a 21 power source -- 22 A. The drawing DC current. 23 Q. -- isn't that right? 24 A. It's a little power source for this, yeah. 25 Q. Yeah. So the claim, itself, is talking</p>	<p style="text-align: right;">Page 193</p> <p>1 off? 2 A. Is what powered off when? 3 Q. You have this little tag or the remote 4 module, or whatever we want to call it. It's combined 5 together with the asset in one box and it's doing asset 6 tracking. Together, as a unit, is it powered off? 7 A. When it's asset tracking? 8 Q. Mm-hmm. 9 A. As defined in the spec, if the asset is 10 powered off, it's powered off. 11 Q. Not the asset. The combination of the two. 12 A. Well, and what the spec is clearly talking 13 about is, that the asset part of it can be powered off 14 while the little part here works. 15 Q. And when we put them together and call them 16 a combined one unit, that thing is not powered off 17 because there is DC current that is being drawn and is 18 flowing through the remote module portion; correct? 19 MR. COHEN: Objection, form. 20 A. No, I don't -- I don't agree with that. 21 BY MR. BLUESTONE: 22 Q. How is it consistent with the laws of 23 physics that somehow it can be drawing DC current and 24 yet be powered off? 25 A. I think the unit is powered off because it</p>

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<p style="text-align: right;">Page 194</p> <p>1 doesn't do its normal operation, much the way a TV is 2 powered off when you hit the off button. 3 Q. But the remote module is receiving power 4 for its -- it is receiving operational power for its 5 intended purpose; correct? 6 A. When this is operating, yes. 7 Q. Okay. So in that hypothetical where 8 they're put together as one unit, as you say the 9 specification discloses, in that instance, if you look 10 at that entire box, would you say there is absolutely 11 no power flowing in that box anywhere? 12 A. I wouldn't say there's absolutely no power 13 anywhere, but I would say the box does not have its 14 operating power. 15 Q. Would you say the remote module within the 16 box has its operating power? 17 A. I would say the remote module does, because 18 it's -- it's doing its thing here. 19 Q. So something in the box has its operating 20 power. We're just focusing on the other part of the 21 box? 22 A. We're focusing on the functionality of the 23 box, which is what we commonly mean when we say 24 something's powered off. 25 Q. Okay. So let's talk about Claim 104 of the</p>	<p style="text-align: right;">Page 196</p> <p>1 has to be in the device? 2 A. An end device, in my world, as one of 3 ordinary skill in the art, would be some type of 4 communication device which has an Ethernet connector on 5 it. It's typically there to do some function or other. 6 Q. So I -- I have a shop and I'm going to sell 7 you an end device. Have I told you at all what's 8 inside the thing I'm going to sell you? Just end 9 device. 10 MR. COHEN: Objection, form, beyond the 11 scope of the deposition. 12 BY MR. BLUESTONE: 13 Q. You mentioned it had to do communications 14 and all these other things. How is that an end device? 15 End device seems rather generic to me, and correct me 16 if I'm wrong. 17 A. Well, in the context -- 18 MR. COHEN: One second. Same objections. 19 BY MR. BLUESTONE: 20 Q. I'm sorry. We kind of are talking over 21 each other. 22 A. Yeah. 23 Q. Let your counsel make the objection. 24 And -- 25 A. Okay.</p>
<p style="text-align: right;">Page 195</p> <p>1 '107 patent. Now, this claim doesn't talk about 2 Ethernet terminal equipment; right? 3 A. Right. 4 Q. It just talks about an end device. 5 A. Right. 6 Q. What would a person of ordinary skill in 7 the art understand an end device to be? 8 A. An end device will be some piece of 9 electronic equipment which has an Ethernet connector. 10 Q. Okay. And the specification doesn't use 11 end device, does it? 12 A. I don't believe so. 13 Q. And there's nothing, to a person of 14 ordinary skill in the art, in the plain meaning of end 15 device that suggests or requires two different power 16 sources; correct? 17 A. I'm not sure how to really answer that. 18 Can you ... 19 Q. Well, you said an end device is -- does an 20 end device, in itself, impart any particular structure? 21 Without any definite -- without looking at the rest of 22 the claim. Just the preamble. It says a powered off 23 end device. 24 A. Right. 25 Q. Just end device. What does that tell you</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. I know we're -- we're having fun, but -- 2 A. Okay. And the question was? 3 Q. How -- how does end device connote any 4 structure at all? 5 MR. COHEN: Objection, form, beyond the 6 scope of the deposition. 7 A. Yeah, that is not something I have offered 8 any opinions on. But, to me, in light of the 9 specification and the type of equipment they're talking 10 about, it would be one of the remote -- pieces of 11 remote equipment, not the -- where, sort of, the remote 12 module would go, not the central module. That's how I 13 would interpret it, in light of the specification. 14 BY MR. BLUESTONE: 15 Q. Okay. So 104, the end device, you're 16 saying, is the remote module of the specification? 17 A. No, it's the remote device, where the 18 remote module would be located with or incorporated 19 into. 20 Q. Okay. Let's divorce ourselves from the 21 patent and the specification and just focus on the two 22 words, "end device," as a person of ordinary skill in 23 the art. 24 A. Well, but this is a claim in the patent, 25 though. I can't just divorce myself from the patent.</p>

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<p style="text-align: right;">Page 198</p> <p>1 Q. I agree, and we're going to get there. I</p> <p>2 promise you.</p> <p>3 A. Well --</p> <p>4 Q. But let's start off with just -- what's the</p> <p>5 plain and ordinary meaning of "end device," just in</p> <p>6 general. If you had your dictionary and you had "end</p> <p>7 device," what would it mean?</p> <p>8 MR. COHEN: Objection, form, beyond the</p> <p>9 scope of the deposition.</p> <p>10 A. Again, I think it's what I just said</p> <p>11 relative to the -- in light of the specification.</p> <p>12 BY MR. BLUESTONE:</p> <p>13 Q. Okay. So "end device" has no meaning</p> <p>14 absent to -- separate and apart from the specification?</p> <p>15 MR. COHEN: Objection, form.</p> <p>16 A. I don't know that I said that.</p> <p>17 BY MR. BLUESTONE:</p> <p>18 Q. Okay.</p> <p>19 A. In light of the specification, I think an</p> <p>20 end device would be a piece of terminal equipment that</p> <p>21 would normally be associated with a remote module.</p> <p>22 Q. Is it an Ethernet terminal equipment or is</p> <p>23 it something else?</p> <p>24 A. It doesn't say that it is, but it has an</p> <p>25 Ethernet connector.</p>	<p style="text-align: right;">Page 200</p> <p>1 as defined and the functional limitations that are the</p> <p>2 same as the functional limitations of the Ethernet</p> <p>3 connector. Right?</p> <p>4 A. Right. That's the first element.</p> <p>5 Q. I mean, that's it in the claim. Where do</p> <p>6 we have license to go and import other unrecited</p> <p>7 limitations as being the components that are turned</p> <p>8 off?</p> <p>9 MR. COHEN: Objection, form.</p> <p>10 A. You know, I -- I -- we're really getting</p> <p>11 off in the weeds here. I can't comment on that.</p> <p>12 I stand behind what I said about powered</p> <p>13 off; that it means without its operating power and --</p> <p>14 BY MR. BLUESTONE:</p> <p>15 Q. But operating power to do what, for Claim</p> <p>16 104?</p> <p>17 A. To operate.</p> <p>18 Q. But what it's supposed to do in Claim 104</p> <p>19 is draw different magnitudes of DC current; right?</p> <p>20 That's the operation in the claim; correct?</p> <p>21 A. Right, but if -- if -- again, as one of</p> <p>22 ordinary skill in the art, I would think if you are</p> <p>23 making some type of device and selling it, that it</p> <p>24 probably has some purpose, some function it is intended</p> <p>25 to do, and when it doesn't have operating power, it</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. Okay. But does it have to be doing</p> <p>2 anything Ethernet communications related?</p> <p>3 MR. COHEN: Objection, form, beyond the</p> <p>4 scope of the deposition.</p> <p>5 A. No, I don't believe it does.</p> <p>6 BY MR. BLUESTONE:</p> <p>7 Q. Okay. So there is a difference between 104</p> <p>8 and Claim 1; correct?</p> <p>9 A. Right.</p> <p>10 Q. Okay. What are the operations for which</p> <p>11 it's supposed to be without operating power, for an end</p> <p>12 device?</p> <p>13 A. Well, again, we'd have to talk about a</p> <p>14 particular device to make any sense, but if it didn't</p> <p>15 have something it was supposed to be doing, no one</p> <p>16 would buy the thing; right? I mean --</p> <p>17 Q. Mm-hmm. So you would agree with me,</p> <p>18 though, that Claim 104 of the '107 patent calls for an</p> <p>19 end device --</p> <p>20 A. I'm sorry. I'm getting too far over.</p> <p>21 Q. Claim 104 of the '107 calls for a powered</p> <p>22 off end device?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. That end device only needs to have an</p> <p>25 Ethernet connector with a -- with a path coupled across</p>	<p style="text-align: right;">Page 201</p> <p>1 can't do that function, and if it doesn't have a</p> <p>2 function other than to do this, you're not likely to</p> <p>3 sell many of them.</p> <p>4 Q. So why can't it be, for example, something</p> <p>5 like Figure 11 of any of the patents-in-suit, which</p> <p>6 looks like this separate connector box that's acting as</p> <p>7 a remote module? In that instance, it wouldn't have</p> <p>8 any other functions.</p> <p>9 A. Well, I dis ...</p> <p>10 Q. Or if you want something better, Figure 14</p> <p>11 you can use, instead, if you like that one better.</p> <p>12 A. Figure 14?</p> <p>13 Q. Whichever one you want to use.</p> <p>14 A. Okay. The IDR card, the net card. We're</p> <p>15 getting -- in the terms of -- of the specification,</p> <p>16 these are -- the two things you pointed to are remote</p> <p>17 modules which are used in conjunction with a hub, a PC,</p> <p>18 or some other piece of equipment.</p> <p>19 Q. Mm-hmm. So couldn't that Etherlock ID card</p> <p>20 in Figure 14 be the end device, and all it's doing is</p> <p>21 having an Ethernet connector, as we can see there?</p> <p>22 There's presumably some path in there. Because it's an</p> <p>23 Etherlock ID, it's going to be doing this -- the</p> <p>24 functional operations. Isn't that a totally reasonable</p> <p>25 read, in view of the specification?</p>

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<p style="text-align: right;">Page 202</p> <p>1 A. It would not be what I would think of as an 2 end device, but -- and ... 3 Q. Why not? 4 A. Because I think of an end device as doing 5 something useful, not just telling me it's there. 6 Q. Well, that's your opinion. 7 A. Yeah. 8 Q. How do we have a consistent opinion that 9 applies to any person who is trying to build -- I mean, 10 that's just what you think. 11 A. Right. 12 Q. How do we know where the boundaries are? 13 A. That's -- that's my opinion, yes. 14 Q. Okay. So how does a person of ordinary 15 skill in the art know which operations are useful and 16 which operations don't count for operating power? 17 MR. COHEN: Objection, form. 18 A. That -- that's -- that's just -- that's too 19 hypothetical for me to give a specific answer. 20 BY MR. BLUESTONE: 21 Q. Well, you would agree with me that 22 operating power, then, under your construction, does 23 not apply to any of the functions that are actually in 24 the claim; correct? 25 MR. COHEN: Objection.</p>	<p style="text-align: right;">Page 204</p> <p>1 A. Operating -- well, for a particular piece 2 of equipment, that would be obvious. All right? You 3 just say, in general, what's the operation? Well, 4 there's a lot of different kinds of equipment. 5 Q. But all those operations, you would agree, 6 are things that are not recited in the claim; correct? 7 A. Right. The complete operation of the 8 Ethernet terminal equipment, for instance. Yeah, go 9 back to Claim 1: A piece of Ethernet terminal 10 equipment. Any one I've ever seen would have a heck of 11 a lot of other stuff besides this in it. This -- 12 Q. But that's not claimed; right? 13 A. But this is -- this is what's claimed, 14 right. 15 Q. So you're relying on the fact that there's 16 other stuff that could be there, but isn't explicitly 17 mentioned? 18 MR. COHEN: Objection, form. 19 A. Well, there's a piece of Ethernet terminal 20 equipment there, all right? And ... 21 BY MR. BLUESTONE: 22 Q. So you're saying "piece of Ethernet 23 terminal equipment," by itself, draws in a whole bunch 24 of other functionality that isn't recited in the claim 25 explicitly?</p>
<p style="text-align: right;">Page 203</p> <p>1 BY MR. BLUESTONE: 2 Q. Something else? Sorry. 3 MR. COHEN: Sorry. Objection, form. 4 A. Can you hit me with that again? 5 BY MR. BLUESTONE: 6 Q. Sure. Powered off, under your 7 construction, you're not applying it to any of the 8 functions that are actually, explicitly recited in the 9 claim; you're saying it applies to something that is 10 unrecited. 11 MR. COHEN: Objection, form. 12 A. It applies to the device, which is recited. 13 BY MR. BLUESTONE: 14 Q. But it doesn't apply to the limitations, as 15 claimed, that need to be present in the device. 16 MR. COHEN: Same objection. 17 A. Yeah, and again, I think that this is going 18 well beyond my construction here. 19 Powered off does not mean that there is no 20 power, whatsoever, in the unit. It means that it 21 doesn't have its normal operating power now. 22 BY MR. BLUESTONE: 23 Q. But -- I'm sorry to belabor the point, but 24 operating power for what? How am I supposed to know 25 operating power for what function?</p>	<p style="text-align: right;">Page 205</p> <p>1 MR. COHEN: Objection, form. 2 A. Well, it's a piece of Ethernet terminal 3 equipment. And if I tried to sell a piece of Ethernet 4 terminal equipment that only did what's in the claim, I 5 think the market would be quite small. All right? So 6 there's all this equipment out there that does things, 7 and if you add this capability to it, then this 8 capability can work even when the rest of it doesn't 9 have its operating power. 10 BY MR. BLUESTONE: 11 Q. How am I supposed to know what those other 12 things are that should be encompassed in the Ethernet 13 terminal equipment? For example, does it have to have 14 the ability to -- to be a wireless access point? 15 MR. COHEN: Objection, form. 16 A. Once again, I think this is just completely 17 off track. You know, I -- I don't see where it has 18 anything to do with the claim construction of what 19 powered off means. It may be getting into infringement 20 issues. I don't know. If you -- 21 BY MR. BLUESTONE: 22 Q. I'm trying to understand how powered -- how 23 I can understand what parts of -- of anything are 24 supposed to be powered off and what parts are allowed 25 to be powered on under the -- under this construction</p>

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<p style="text-align: right;">Page 206</p> <p>1 of operating power, without its operating power.</p> <p>2 A. All right.</p> <p>3 Q. And my question is simply: How do I know,</p> <p>4 under your definition of "without its operating power,"</p> <p>5 what functions are germane to that? How do I know?</p> <p>6 A. Well, again, if it's your piece of terminal</p> <p>7 equipment, you would know. I mean, for a particular</p> <p>8 piece of equipment, it would be fairly straight</p> <p>9 forward. I mean, if you have, for instance, a wireless</p> <p>10 access point, which is a piece of Ethernet terminal</p> <p>11 equipment, and it has power over Ethernet in it, when</p> <p>12 you start the detection process, the equipment is</p> <p>13 unpowered until all that has happened. So there is</p> <p>14 some power in the equipment, but it's still off,</p> <p>15 because until you pass detection classification, you</p> <p>16 don't apply operating power.</p> <p>17 Q. But for the purposes of the elements of the</p> <p>18 claim, at least as to how I understand the plaintiffs</p> <p>19 read their infringement read, there is power going on</p> <p>20 during detection. It might be a low amount of power,</p> <p>21 but there is power.</p> <p>22 A. But it's not operating power for the</p> <p>23 wireless access point. You can't communicate via the</p> <p>24 wireless access point while that's going on.</p> <p>25 Q. But it is operating power for the purpose</p>	<p style="text-align: right;">Page 208</p> <p>1 operating power. Classification is not operating power</p> <p>2 at all?</p> <p>3 MR. COHEN: Same objections.</p> <p>4 A. Right.</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. Okay. Now, what about the portion of it</p> <p>7 where it's ramping up? Does that now have operating</p> <p>8 power?</p> <p>9 MR. COHEN: Objection, form, beyond the</p> <p>10 scope of the deposition.</p> <p>11 A. I think that's irrelevant. Once you have</p> <p>12 applied 48-volt power, then you have operating power.</p> <p>13 I mean, any time you apply power, there's going to be</p> <p>14 some ramp-up.</p> <p>15 BY MR. BLUESTONE:</p> <p>16 Q. How many volts do I need to apply for it to</p> <p>17 now constitute operating power?</p> <p>18 MR. COHEN: Objection. Wait one second.</p> <p>19 Objection, form, beyond the scope of the deposition.</p> <p>20 A. Yeah, I think that, once again, that has</p> <p>21 nothing to do with what we're talking about here. And</p> <p>22 in the POE spec, it tells you what the minimum you have</p> <p>23 to apply.</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. Wait a second. POE spec has nothing to do</p>
<p style="text-align: right;">Page 207</p> <p>1 of doing detection; correct?</p> <p>2 MR. COHEN: Objection.</p> <p>3 A. That's not what I would call operating</p> <p>4 power. It's just a small amount of power to do</p> <p>5 detection. It's not operating power for the unit.</p> <p>6 BY MR. BLUESTONE:</p> <p>7 Q. But it is operating power for detection;</p> <p>8 correct?</p> <p>9 MR. COHEN: Objection, form.</p> <p>10 A. I would not call it operating power, no. I</p> <p>11 wouldn't call it.</p> <p>12 BY MR. BLUESTONE:</p> <p>13 Q. Okay. So what about classification? That</p> <p>14 wouldn't be operating power?</p> <p>15 MR. COHEN: Objection, form --</p> <p>16 A. No, because the unit isn't operating.</p> <p>17 MR. COHEN: Wait. Wait.</p> <p>18 MR. BLUESTONE: Let him finish his</p> <p>19 objection.</p> <p>20 MR. COHEN: Objection, form, beyond the</p> <p>21 scope of the deposition.</p> <p>22 A. And, once again, yes, that's not operating</p> <p>23 power.</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. Okay. So detection, you say, is not</p>	<p style="text-align: right;">Page 209</p> <p>1 with the patent. There's nothing in the patent that</p> <p>2 talks about POE.</p> <p>3 A. Bingo. That's what I've been saying this</p> <p>4 whole five minutes of discussion; that this has nothing</p> <p>5 to do with it.</p> <p>6 Q. Well, the patent, itself, doesn't mention</p> <p>7 POE; correct?</p> <p>8 A. Right. Well, you just asked a question</p> <p>9 about it.</p> <p>10 Q. That's fine. But what I'm trying to</p> <p>11 understand here is: The remote module, we've agreed,</p> <p>12 has to be powered to do anything; right?</p> <p>13 MR. COHEN: Objection, form.</p> <p>14 A. Yeah, I -- I -- I think I've answered that</p> <p>15 numerous times.</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. Right. There's no dispute that the remote</p> <p>18 module has to be powered to perform its functions;</p> <p>19 correct?</p> <p>20 A. Right, by the current and the at least one</p> <p>21 path, yes.</p> <p>22 Q. Right. And the functions of the remote</p> <p>23 module are what is recited in Claim 104; for example,</p> <p>24 the '107; right? You've got the path, it's coupled</p> <p>25 across the contacts, it's drawing different magnitudes</p>

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<p style="text-align: right;">Page 210</p> <p>1 of current. These are the remote module functions; 2 correct? 3 A. And with reference to the implementation 4 here, correct. 5 Q. Yeah. And the same thing for Claim 1. 6 It's talking about only the remote module 7 functionality. It doesn't talk about anything of what 8 the asset's supposed to do; correct? 9 A. Correct. 10 Q. Okay. Now, the wireless access point stuff 11 that we mentioned before, even a wireless access point 12 is going to have different operating power under 13 different conditions; correct? 14 A. It's going to need different amounts of 15 power. 16 Q. Right. So you might be in a beacon mode, 17 for example, which is going to be a lower power draw 18 than when it's connected to an Ethernet communicating 19 device; correct? 20 A. If you say so. 21 Q. Well, is that -- am I wrong? I could be 22 wrong. 23 A. I have not stated any opinions about 24 wireless access points. I -- 25 Q. Oh. I'm -- okay. I'm trying to figure out</p>	<p style="text-align: right;">Page 212</p> <p>1 understand there are different power draws for -- 2 depending on the functions that are being performed by 3 a wireless access point; correct? 4 A. I do. 5 Q. How do I know what the floor is that 6 determines between operating power in watts and 7 irrelevant power draw? Does my question make sense? 8 A. It does, and what I'm saying is, if it can 9 perform its normal operating functions, it has 10 operating power. 11 Q. What if there's just an LED light on it; a 12 very small, minute current draw of a tiny little LED. 13 Is that sufficient for it to be without its operating 14 power? 15 A. Is -- is -- is that its purpose? Just to 16 be an LED? 17 Q. I mean, I don't know. Does it matter? 18 A. Well, I think for the operating power, it 19 does matter; that if it doesn't -- if it's not able to 20 operate and it's on the mode because of lack of power, 21 then it doesn't have it. And -- 22 Q. Okay. So we've gone a while and I just 23 have a couple of more questions and I'll let you take a 24 break on this. 25 A. Okay.</p>
<p style="text-align: right;">Page 211</p> <p>1 a hypothetical to understand what the scope of "without 2 its operating power" is, if it's not the elements 3 recited in the claim. That's where I'm going with 4 this. 5 Let's say that the powered up end device or 6 the Ethernet terminal equipment is a hypothetical 7 situation where it's a wireless access point. Okay? 8 A. Okay. 9 Q. Now, am I correct that it's your opinion 10 that if the device's POE -- now I am talking about POE 11 in this example -- 12 A. Okay. 13 Q. -- but the device's POE detection has 14 nothing to with its operating power? 15 A. That's my opinion, yes. 16 Q. Now, would beacon mode be its operating 17 power? 18 MR. COHEN: Objection, form, beyond the 19 scope of the deposition. 20 A. I -- I -- I have no -- 21 THE WITNESS: Sorry. "Beyond the scope." 22 I have -- 23 A. I have no opinion on that. 24 BY MR. BLUESTONE: 25 Q. Okay. Do you have an under -- you do</p>	<p style="text-align: right;">Page 213</p> <p>1 Q. Do you have any opinion in any way about 2 whether or not Claim 103's addition of the piece of 3 Ethernet terminal equipment being powered off, whether 4 that has -- provides any patentable distinction whether 5 it's powered off or not? 6 MR. COHEN: Objection, form, beyond the 7 scope of the deposition. 8 A. I -- I -- I'm not sure what you're getting 9 at there. 10 BY MR. BLUESTONE: 11 Q. Well, they've -- they've added in a 12 specific claim where the only thing that's different 13 from the base claim -- 14 A. Right. 15 Q. -- is that it's powered off. How is there 16 anything inventive about that? 17 MR. COHEN: Objection, form.. beyond the 18 scope of the deposition. 19 A. Well, and which -- which patent are we on? 20 The -- the 103 of what patent? 21 BY MR. BLUESTONE: 22 Q. I'm sorry. The '107 patent. 23 A. '107. 24 Q. It's Exhibit 3. 25 A. 103. Okay. Well, this is a -- this is a</p>

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<p style="text-align: right;">Page 214</p> <p>1 dependent claim; correct?</p> <p>2 Q. Mm-hmm.</p> <p>3 A. So it's just -- it's another element added</p> <p>4 to the dependent claim.</p> <p>5 Q. Right. How is it -- we've already said</p> <p>6 before that to the claimed invention, whether the asset</p> <p>7 is powered on or powered off is totally irrelevant to</p> <p>8 its operation; correct?</p> <p>9 MR. COHEN: Objection, form.</p> <p>10 A. Well, again, for -- for a dependent claim,</p> <p>11 you don't have to have something that would be</p> <p>12 inventive if it was on its own; right? It's a further</p> <p>13 restriction to -- to something which, presumably, was</p> <p>14 already inventive, or it wouldn't have been an</p> <p>15 independent claim.</p> <p>16 MR. BLUESTONE: All right. Why don't we</p> <p>17 take a break.</p> <p>18 VIDEOGRAPHER: We are off the record at</p> <p>19 3:10 p.m.</p> <p>20 (Break from 3:10 p.m. until 3:25 p.m.)</p> <p>21 VIDEOGRAPHER: We are back on the record at</p> <p>22 3:25 p.m. This is file 5.</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. Mr. Baxter, let's go to the section of your</p> <p>25 declaration, paragraphs 41 through 53, where we are</p>	<p style="text-align: right;">Page 216</p> <p>1 electrical condition, it just says "to result from at</p> <p>2 least one condition." Do you see that? Line 21.</p> <p>3 A. 21. I do.</p> <p>4 Q. So just as a framework for our discussions,</p> <p>5 would you agree with me that the patents-in-suit use at</p> <p>6 least one electrical condition for the central module,</p> <p>7 but at least one condition for the remote module?</p> <p>8 MR. COHEN: Objection, form.</p> <p>9 A. Yes, it seems that way.</p> <p>10 BY MR. BLUESTONE:</p> <p>11 Q. Okay. Do you believe that it was a</p> <p>12 drafting error by the patent attorney to omit</p> <p>13 "electrical" for the '107 patent?</p> <p>14 MR. COHEN: Objection, form, beyond the</p> <p>15 scope of the deposition.</p> <p>16 A. I -- I don't know why the patent attorney</p> <p>17 wrote it that way.</p> <p>18 BY MR. BLUESTONE:</p> <p>19 Q. Okay. But you believe, in Paragraph 45,</p> <p>20 that we should reintroduce the word "electrical" into</p> <p>21 the claims for the '107 patent, even though it doesn't</p> <p>22 appear there.</p> <p>23 A. '107, Claim 1 ... at least one</p> <p>24 condition ...</p> <p>25 Oh, I'm not saying we rewrite the claim.</p>
<p style="text-align: right;">Page 215</p> <p>1 discussing -- you are discussing at least one</p> <p>2 condition.</p> <p>3 A. Okay.</p> <p>4 Q. Now, the condition applied is used in the</p> <p>5 '107 patent, the '760 patent, and the '838 patent;</p> <p>6 correct?</p> <p>7 A. I believe so.</p> <p>8 Q. In the '760 patent, it recites, towards the</p> <p>9 end -- I'm looking generally towards Line 35, starting</p> <p>10 on 34 -- "to control the application of at least one</p> <p>11 electrical condition to at least two of the</p> <p>12 conductors." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. You claim -- or sorry -- patent --</p> <p>15 In the '838 patent, on Page 5 of Exhibit 6,</p> <p>16 it also is calling for at least one electrical</p> <p>17 condition. Do you see that?</p> <p>18 A. Just one moment. Yes.</p> <p>19 Q. And in both instances, it's relating to</p> <p>20 what the piece of central equipment is doing; correct?</p> <p>21 A. Sixty ... equipment ... yes.</p> <p>22 Q. Okay. Now, the '107 patent, Claim 1 on the</p> <p>23 first page of Exhibit 6 -- I'm sorry, not the first</p> <p>24 page. The third page. Pardon me.</p> <p>25 '107 patent, Claim 1, doesn't use</p>	<p style="text-align: right;">Page 217</p> <p>1 I'm saying that I think this means an electrical</p> <p>2 condition.</p> <p>3 Q. But your interpretation effectively takes</p> <p>4 the existing language and just adds the word</p> <p>5 "electrical" to it?</p> <p>6 MR. COHEN: Objection, form.</p> <p>7 A. I suppose that would be fair to say.</p> <p>8 BY MR. BLUESTONE:</p> <p>9 Q. And, thus, in applying something to the</p> <p>10 context, condition should be electrical condition, but</p> <p>11 when we're talking about the path coupled across, that</p> <p>12 shouldn't be an electrical connection?</p> <p>13 A. Well --</p> <p>14 MR. COHEN: Objection, form.</p> <p>15 A. The way that I read '107, "the different</p> <p>16 magnitudes of DC current flow designed and configured</p> <p>17 to result from at least one condition applied to at</p> <p>18 least one of the contacts of the first and second," so</p> <p>19 if you're going to cause different magnitudes of</p> <p>20 current by applying a condition to those two contacts,</p> <p>21 it would seem to me that it would be an electrical</p> <p>22 condition.</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. Does it necessarily have to be an</p> <p>25 electrical condition applied to the contacts?</p>

55 (Pages 214 - 217)

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<p style="text-align: right;">Page 218</p> <p>1 A. In the context of this specification claim, 2 I would think so. I wouldn't think that painting them 3 blue, for instance, would -- would cause a different 4 current or, you know -- 5 Q. But potentially, a thermodynamic condition 6 could affect the current draw; right? 7 A. A thermodynamic condition? 8 Q. Like, there could be fluctuations that 9 could affect the current draw; right? 10 A. Boy, that's not the way I would interpret 11 this. I think it's pretty straightforward. 12 Q. So what is encompassed in "electrical"? 13 A. Well, electrical conditions that you would 14 apply typically would include voltage impedance, or I 15 suppose you could inject current in, so current source, 16 voltage source, or an impedance. 17 Q. So is "electrical condition" only items 18 that are governed by ohms law? 19 A. I haven't really thought of it in that way. 20 Something that you would do to effect the current, 21 which would most likely be either apply a voltage or an 22 impedance, depending on what's already there, could be 23 to apply a current source, although you could sort of 24 consider that to be like a voltage and an impedance, 25 so --</p>	<p style="text-align: right;">Page 220</p> <p>1 BY MR. BLUESTONE: 2 Q. So that the application of the condition 3 can come from a non-claimed source? 4 A. Well, the condition is applied to the 5 contacts. 6 Q. Right. But the claim doesn't specify where 7 that condition comes from, in other words? 8 MR. COHEN: Objection, form, beyond the 9 scope of the deposition. 10 A. I have not actually given that any thought 11 so I -- I don't know right now. 12 BY MR. BLUESTONE: 13 Q. Well, you did already say that you presume 14 it could be applied from either this end or that end. 15 What did that mean? 16 A. That was a preliminary ... oh, preliminary 17 thought. But as I said, I really would want to 18 consider this more to give you a firm answer. 19 Q. Well, it's your opinion that this term is 20 not indefinite; right? 21 A. That is correct, yes. 22 Q. Okay. And in doing that, you look to the 23 intrinsic evidence, correct, including the claim 24 language? 25 A. Right.</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. Well, let's take a quick step back, just to 2 make sure the record is clear. 3 You would agree that ohms law describes the 4 relationship between voltage, impedance and current; 5 correct? 6 A. Correct. 7 Q. And the examples that you have for 8 electrical condition are voltage, impedance or current 9 applied to the contact; correct? 10 A. Correct. 11 Q. Is there anything else that you can think 12 of that would be an electrical condition, other than 13 those three items, sitting here today? 14 A. Those are the ones that come to mind, yes. 15 Q. And when it's saying a condition applied to 16 the context -- in the context of Claim 1 of the '107 17 patent, can that application of the condition be from 18 some source external to the Ethernet terminal 19 equipment, itself? 20 MR. COHEN: Objection, form, beyond the 21 scope of the deposition. 22 A. Let me check this again. DC current ... 23 Yes, I presume it could be applied from 24 either side of the contacts, either from this end or 25 that end.</p>	<p style="text-align: right;">Page 221</p> <p>1 Q. What's your support in the specification 2 that you should be adding the word "electrical"? 3 A. Well, the conditions that are applied in 4 the example of limitations are either voltages or 5 impedances. 6 Q. And because they are voltages or impedances 7 in the specification, you group them to be electrical 8 conditions, as a grouping for both? 9 A. Yes, which is consistent with my opinion 10 that those are the things you would do to effect -- to 11 cause different magnitudes of current to flow. 12 Q. Now, the clause starting from Line 19 of 13 Claim 1 of the '107 patent, "The different magnitudes 14 of DC current flow to result from at least one 15 condition applied to at least one of the contacts of 16 the first and second pairs of contacts." 17 Do you see that? 18 A. Yes. 19 Q. "At least one condition" means there can be 20 more than one condition applied; correct? 21 A. Yes. 22 Q. So you can have multiple conditions apply 23 to at least one of the contacts that will cause 24 different magnitudes of DC current to flow? 25 A. Right.</p>

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<p style="text-align: right;">Page 222</p> <p>1 Q. Isn't that merely just reciting multiple 2 applications of ohms law? 3 A. I'm not sure what you mean by "merely." 4 Q. Well, okay, let me take out the word 5 merely. 6 Isn't that allowing for multiple 7 applications of ohms law? 8 I apply a voltage at one contact, I get one 9 magnitude of DC current. I apply another voltage and I 10 get another one. 11 A. Yes, that's true, you can control the 12 voltage or the impedances, or both. 13 Q. Right. So if your condition applied in the 14 circumstances is voltage 1 and voltage 2, you're going 15 to get current 1 and current 2. 16 A. Okay. 17 Q. I mean, is that fair, that that's -- that 18 satisfies that clause? 19 A. I -- 20 MR. COHEN: Objection, form, beyond the 21 scope of the deposition. 22 A. I presume that it would, although, again, 23 you know, I think we're getting well beyond what 24 "condition" means here. 25 BY MR. BLUESTONE:</p>	<p style="text-align: right;">Page 224</p> <p>1 impedance condition applied? 2 A. Well, we talked through several of these 3 pictures, where we were changing the impedance to move 4 current back and forth from one to the other, so the 5 impedance across the contacts out there, it was 6 changing and -- 7 Q. Do you mind -- pick whichever figure you 8 want to do. Do you mind briefly walking through that, 9 of how the impedance? I understood in the context of 10 current flow, but we didn't discuss it in the context 11 of impedance. 12 A. Okay. Here's one. If we take Figure 10 -- 13 actually, that one's harder to see. Let's take ... 14 let's take Figure 8. 15 Q. Okay. 16 A. Yeah. Figure 8. All right. So most of 17 the current -- the current, in the absence of any 18 changes, the current's going to flow through resistor 19 112, zener diode 114, split through the two 10K 20 resistors equally, and come back on the two top pairs. 21 All right? 22 Q. Uh-huh. 23 A. Now, when we -- when we modify the current, 24 we alternately draw current through the resistors 25 either attached to RA1 or RA2, basically shunt some of</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. And that's what I'm trying to figure out. 2 To put it plainly, one read of that clause 3 that you're talking about is, you're applying ohms law 4 to it. You apply voltage, you get a current. You 5 apply another voltage, you get another current. And 6 you read on that. 7 And I'm trying to understand if that's 8 encompassed in that claim term, as you understand it. 9 A. Well, you certainly don't want to break 10 ohms law. That would be bad, wouldn't it? 11 Q. I don't know how I would do that, but yeah. 12 A. So yes, I think that that element, sure, if 13 it follows ohms law, that's fine. You could satisfy 14 that element with voltages and current to follow ohms 15 law. 16 Q. Okay. And in your understanding, it has to 17 be an electrical condition -- why, again? Because the 18 spec -- because of what the specification shows? 19 A. Well, because in my experience, if you want 20 to draw different magnitudes of current, what you would 21 do to contacts is put some type of electrical condition 22 on them, generally either a voltage or impedance, and 23 those are the two things illustrated in the 24 specification, so that's what I would think of. 25 Q. How is the specification showing an</p>	<p style="text-align: right;">Page 225</p> <p>1 it off, so we're effectively changing the resistance in 2 series with that leg of the thing to make either more 3 or less current go through one than the other. So it's 4 by -- it's by changing the effective impedance across 5 there that we move the current from one to the other. 6 Q. Okay. And that changing impedance is going 7 to operate to address the differential, if you will, in 8 the currents going in the top two lines? 9 A. Right. 10 Q. Okay. And those differentials in Figure 8 11 are what's conveying information about the device? 12 A. That's right. 13 Q. Now, this might be a silly question, so I 14 apologize if it is. I'm just trying to understand 15 "impedance condition." 16 Are we saying that impedance condition 17 would also encompass something like in the '260 patent 18 where it's talking about a discontinuity; like, 19 literally, breaking the path? 20 A. The '260? 21 Q. Yeah, the '260, which is incorporated by 22 reference, and I have it if you want me to pull up the 23 figures. Just let me know. 24 A. Right. 25 Q. It's -- it's closing a current loop;</p>

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<p style="text-align: right;">Page 226</p> <p>1 correct?</p> <p>2 A. It is.</p> <p>3 Q. And the way it's operating is, it's going</p> <p>4 through one winding of a transformer; correct?</p> <p>5 A. Right.</p> <p>6 Q. And the way you know whether that -- that</p> <p>7 piece of equipment is connected or not is whether or</p> <p>8 not it has broken continuity, whether that transformer</p> <p>9 has been removed?</p> <p>10 A. Right. So you're looking for current or no</p> <p>11 current --</p> <p>12 Q. Right.</p> <p>13 A. -- is basically what you are looking for,</p> <p>14 yes.</p> <p>15 Q. And what I'm to figure out by the read of</p> <p>16 impedance condition, does that encompass a circumstance</p> <p>17 where the impedance condition is just basically</p> <p>18 disconnecting it?</p> <p>19 MR. COHEN: Objection, form, beyond the</p> <p>20 scope of the deposition.</p> <p>21 A. Yes -- well, no. This -- this is a</p> <p>22 different scenario than the -- than the '260, where we</p> <p>23 are altering the current from one value to another;</p> <p>24 we're not disconnecting it.</p> <p>25 BY MR. BLUESTONE:</p>	<p style="text-align: right;">Page 228</p> <p>1 paragraphs?</p> <p>2 MR. COHEN: Objection. One second.</p> <p>3 Objection, form.</p> <p>4 A. Well, in 74, we're talking about</p> <p>5 specifically what it means in the context of the</p> <p>6 claims. In 70 and 73, we're talking about what it</p> <p>7 means sort of in plain English, and I think those are</p> <p>8 pretty much the same thing.</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. And then what about 70?</p> <p>11 A. Well, 70, I think, is very similar to 73.</p> <p>12 I mean --</p> <p>13 Q. Well, 70 says it's a detection scheme rule</p> <p>14 or procedure or a part thereof, but then in 73, you're</p> <p>15 saying it's a procedure, scheme or set of rules, but</p> <p>16 not for detecting, discovering or determining the</p> <p>17 existence of something.</p> <p>18 A. Right, and it's just a little more</p> <p>19 elaboration about what you might be detecting.</p> <p>20 Q. Well, which one's the one that I should --</p> <p>21 if -- if we're saying the claim term is indefinite and</p> <p>22 you're saying not, which one is the one that we should</p> <p>23 be applying?</p> <p>24 A. Well, I don't really think they're</p> <p>25 inconsistent with each other, I mean, I guess is ... 70</p>
<p style="text-align: right;">Page 227</p> <p>1 Q. Okay. Okay. Let's talk detection protocol</p> <p>2 a little bit.</p> <p>3 A. Okay.</p> <p>4 Q. And that's paragraph 67 through 74.</p> <p>5 A. Mm-hmm. Okay.</p> <p>6 Q. What support is there in the specification</p> <p>7 for a detection protocol?</p> <p>8 A. The spec discusses detecting, for instance,</p> <p>9 an unauthorized piece of equipment and gives you,</p> <p>10 basically, a means to do that if you want.</p> <p>11 Q. Okay.</p> <p>12 A. And similarly, it references the '260,</p> <p>13 which allows you to detect a piece of disconnected</p> <p>14 equipment.</p> <p>15 Q. Is there anything else that you can pick up</p> <p>16 through there?</p> <p>17 A. Those are the -- the main things I can</p> <p>18 think of right now, yeah.</p> <p>19 Q. Okay. Now, you talk about what detection</p> <p>20 protocol means in Paragraph 70, 73 and 74. Take a</p> <p>21 minute to re-read those to yourself and let me know</p> <p>22 when you are ready.</p> <p>23 A. Okay.</p> <p>24 Q. How do you reconcile that there are three</p> <p>25 different definitions in each -- one in each of these</p>	<p style="text-align: right;">Page 229</p> <p>1 is, in light of the specification, what you would</p> <p>2 think, and 73 is, in plain English, what it would mean,</p> <p>3 and I think they are pretty much the same.</p> <p>4 Q. Okay. Well, in 73, the claim talks about</p> <p>5 "detect." What's being added by discovering or</p> <p>6 determining?</p> <p>7 A. Those are sort of -- well, as it said in</p> <p>8 the first line, "detect" means to detect, discover or</p> <p>9 determine the existence of something. Detection means.</p> <p>10 So I'm just plugging in that definition.</p> <p>11 Q. So in the '260 patent, it's -- the</p> <p>12 detection is whether there's the devices on the network</p> <p>13 or not?</p> <p>14 A. You're detecting a device that's been</p> <p>15 disconnected, yes.</p> <p>16 Q. You're detecting presence of the device</p> <p>17 based on continuity in the circuit?</p> <p>18 A. Right, and you're detecting when it's been</p> <p>19 disconnected by absence of continuity.</p> <p>20 Q. So the fact that there is just current</p> <p>21 flow, a non-zero current is conveying in, is -- is --</p> <p>22 is that detection protocol?</p> <p>23 A. Well, it's putting it there and looking for</p> <p>24 it, yes.</p> <p>25 Q. Who describes -- who ascribes what meaning</p>

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<p style="text-align: right;">Page 230</p> <p>1 should be applied to this physical characteristic of a 2 circuit?</p> <p>3 MR. COHEN: Objection, form, beyond the 4 scope of the deposition.</p> <p>5 A. Who ascribes what to what?</p> <p>6 BY MR. BLUESTONE:</p> <p>7 Q. If it's this -- a detection scheme, rule or 8 procedure, whose procedure do we apply?</p> <p>9 MR. COHEN: Objection, form, beyond the 10 scope of the deposition.</p> <p>11 A. You really want me to tell you?</p> <p>12 BY MR. BLUESTONE:</p> <p>13 Q. Sure.</p> <p>14 A. I think the designer of the equipment will 15 decide if they want to detect something, and if so, how 16 they want to do it and what -- what the procedure is. 17 I mean, I --</p> <p>18 Q. So what if I've designed my equipment and I 19 don't really want to detect anything.</p> <p>20 A. Okay.</p> <p>21 Q. And it's drawing 5 milliwatts in its normal 22 operation. That's just what it does. And, Mr. Baxter, 23 you decide that you're going to go and say that 24 anything under 10 milliwatts is low power, after the 25 fact. Is that same already-existing circuitry now part</p>	<p style="text-align: right;">Page 232</p> <p>1 follow this particular example he used in the 2 specification, you would build the circuit like this in 3 and you would define, for your equipment, what these 4 pulses mean when they're coming back, so the other end 5 can make sense of it, and so it's not like, you know, 6 you're going to put a 12-ohm resistor there, and a year 7 from now get sued because someone says, "Hey, to me, 12 8 ohms is very significant." It's in your equipment and 9 the way it operates. Is that what it's doing?</p> <p>10 Furthermore and additionally, let me say, 11 these are all dependent claims, so you would have to 12 have already implemented one of the independent claims 13 before this even became an issue. All right? So it's 14 not like you're minding your own business, haven't done 15 anything wrong, when somebody says, "Wait a minute. 16 That's a detection protocol. Off to jail with you." 17 All right? I mean --</p> <p>18 Q. But what -- what stops that from happening 19 in the plain meaning of the claim? I mean, it's just 20 saying it's a detection protocol; right?</p> <p>21 MR. COHEN: Objection, form, beyond the 22 scope of the deposition.</p> <p>23 BY MR. BLUESTONE:</p> <p>24 Q. I mean, I get that that's not what you 25 would -- would do. But what's stopping from -- the</p>
<p style="text-align: right;">Page 231</p> <p>1 of a detection scheme?</p> <p>2 A. No, not in my opinion.</p> <p>3 Q. Why not?</p> <p>4 A. Because a detection scheme -- again, 5 detection is a procedure, scheme or set of rules, so 6 you would have to say, "Hey, look, I'm going to do this 7 and if this happens, it means X and if that happens, it 8 means Y, and if the other happens, it means Z," and 9 presumably someone else is going to be looking for that 10 and noticing it. Otherwise, there's not much point in 11 doing it. So you would need to define that detection 12 protocol and build it into your equipment.</p> <p>13 Q. So it depends on what the person designing 14 it is thinking at that time?</p> <p>15 A. No. No. No. We've been around this barn 16 a dozen times, I mean, between the two depositions.</p> <p>17 I mean, engineers are not as clueless as 18 you give us credit for, there, Mr. Bluestone. When 19 you're designing a product, you think through the 20 requirements and how it's going to operate and you have 21 a set of specifications and you design it to meet them.</p> <p>22 Q. Okay.</p> <p>23 A. And if you decide, for instance, that you 24 are going to do POE, you are going to build that 25 detection algorithm in. If you decide you're going to</p>	<p style="text-align: right;">Page 233</p> <p>1 claim from being read as being a detection protocol 2 that is in place after the fact?</p> <p>3 MR. COHEN: Objection, form.</p> <p>4 A. Well, again, let me state I'm not a 5 lawyer -- I can't -- much less a judge. I can't say 6 who can sue who or if they would win, but, I mean, 7 unless you had (a) already infringed some other claim, 8 independent claim, and (b) had documented that you had 9 this detection protocol and how it works, I think it 10 would be very difficult to show that you were 11 infringing these claims.</p> <p>12 BY MR. BLUESTONE:</p> <p>13 Q. Why? Why would that be difficult? Let's 14 assume that the independent claim is satisfied and 15 there's no fight.</p> <p>16 A. Okay.</p> <p>17 Q. Why is it difficult to show whether or not 18 you are part of a detection protocol, or not, to 19 infringe the claim?</p> <p>20 MR. COHEN: Objection, form, beyond the 21 scope of the deposition.</p> <p>22 A. Again, I have not thought this through in 23 great detail. I really don't have a firm opinion on 24 that question. But there are protocols for doing 25 things that are documented and that would be evidence</p>

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<p style="text-align: right;">Page 234</p> <p>1 that you were, but ...</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. Does the protocol have to be -- be in</p> <p>4 existence at the time of the person making the device?</p> <p>5 MR. COHEN: Objection, form, beyond the</p> <p>6 scope of the deposition.</p> <p>7 A. Again, I -- what was the question again?</p> <p>8 I ...</p> <p>9 BY MR. BLUESTONE:</p> <p>10 Q. For -- you say that detection protocol is</p> <p>11 not indefinite.</p> <p>12 A. Right.</p> <p>13 Q. And my question is: Is there a temporal</p> <p>14 limitation to detection protocol such that it needs to</p> <p>15 be in existence at the time that the person is making</p> <p>16 the device in question?</p> <p>17 A. Oh, I see.</p> <p>18 MR. COHEN: Same objections.</p> <p>19 A. I -- I really have not considered that in</p> <p>20 depth and I can't answer. I could speculate, but I</p> <p>21 don't see any point in that.</p> <p>22 BY MR. BLUESTONE:</p> <p>23 Q. Well, I mean, go ahead and speculate, if</p> <p>24 you can come up with some meaning to it.</p> <p>25 MR. COHEN: Objection, form, beyond the</p>	<p style="text-align: right;">Page 236</p> <p>1 MR. COHEN: Objection, form, beyond the</p> <p>2 scope of the deposition.</p> <p>3 A. I -- I have not addressed the validity or</p> <p>4 invalidity at all, thus far, so I have no opinion.</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. Earlier you said if you decide, for</p> <p>7 instance, that you're going to do POE, you are going to</p> <p>8 build that detection algorithm in. If you decide</p> <p>9 you're going to follow this particular example you used</p> <p>10 in the specification to build a circuit like this and</p> <p>11 you defined your equipment for what these pulses mean</p> <p>12 when they're coming back, so the other end could make</p> <p>13 sense of it.</p> <p>14 And there's more. I want to talk about</p> <p>15 those two circumstances.</p> <p>16 Do you agree with me -- well, let's first</p> <p>17 talk about specification.</p> <p>18 Is there something in the specification</p> <p>19 that's talking about an asset tracking detection</p> <p>20 protocol?</p> <p>21 MR. COHEN: Objection, form.</p> <p>22 A. Is that a question?</p> <p>23 Well, I would view the -- the Chrimar</p> <p>24 patents, the earlier ones, to be doing that with the</p> <p>25 disclosure about how you get the interaction between a</p>
<p style="text-align: right;">Page 235</p> <p>1 scope of the deposition.</p> <p>2 A. I think that would require further study.</p> <p>3 I don't want to ...</p> <p>4 BY MR. BLUESTONE:</p> <p>5 Q. So sitting here today, you can't tell me</p> <p>6 whether or not there's any timing component to</p> <p>7 detection protocol?</p> <p>8 A. Not in any legal sense, no. I mean, I</p> <p>9 would think it's very unlikely that you are going to</p> <p>10 innocently make something and five years later, you</p> <p>11 know, someone's going to say, "Oh, well, that's painted</p> <p>12 red; I can detect it because of that." I mean, that's</p> <p>13 -- you know, I think in -- in -- in the sense this is</p> <p>14 already an ind- -- or a dependent claim, you would have</p> <p>15 to be doing this stuff (indicating) in the way that</p> <p>16 also the detection protocol, and I -- I really don't</p> <p>17 see that happening by accident.</p> <p>18 Q. Okay. Well, let's say that Claim 1 of the</p> <p>19 '107 patent is found to be invalid, in view of prior</p> <p>20 art. The prior art doesn't show a detection protocol,</p> <p>21 for some odd reason.</p> <p>22 A. Mm-hmm.</p> <p>23 Q. Does the existence that it can be part of a</p> <p>24 detection protocol make any difference, then, to the</p> <p>25 validity of that dependent claim?</p>	<p style="text-align: right;">Page 237</p> <p>1 central module and remote module and how you get</p> <p>2 information back, and so on. That could be considered</p> <p>3 a protocol for detecting information.</p> <p>4 BY MR. BLUESTONE:</p> <p>5 Q. When you said the earlier ones, are you</p> <p>6 talking about the '260 patent or are you talking about</p> <p>7 something else?</p> <p>8 A. Well, the '250, in particular, I was</p> <p>9 thinking of, is in great deal, but that's the claim;</p> <p>10 but the specifications are there in all of them, so --</p> <p>11 Q. What about the part of the specification</p> <p>12 that talks about how you are encoding a unique ID</p> <p>13 number and modulating it via DC current. Would that be</p> <p>14 a detection protocol disclosed?</p> <p>15 A. Well, I think that's part of a detection</p> <p>16 scheme, yes.</p> <p>17 Q. Okay. So a person reading the patent might</p> <p>18 know of that detection scheme; correct?</p> <p>19 A. They might or they would, yes.</p> <p>20 Q. Would a person reading the patent have any</p> <p>21 knowledge of a POE detection scheme?</p> <p>22 A. If they were of ordinary skill in the art,</p> <p>23 they would, but --</p> <p>24 Q. At the time of the invention of the</p> <p>25 patents?</p>

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<p style="text-align: right;">Page 238</p> <p>1 A. Not then, no.</p> <p>2 Q. It would only be relevant after-the-fact;</p> <p>3 right?</p> <p>4 A. After-the-fact of the invention.</p> <p>5 Q. Mm-hmm.</p> <p>6 A. So if you're asking, did they invent this</p> <p>7 before POE invented detection, my answer would be yes.</p> <p>8 Q. No. My -- my question is, in essence: How</p> <p>9 is it at all fair to go and have the claims encompass</p> <p>10 POE as part of a detection protocol when the patent,</p> <p>11 itself, makes no mention of POE?</p> <p>12 MR. COHEN: Objection, form, beyond the</p> <p>13 scope of the deposition.</p> <p>14 A. I don't ... again, that -- that's outside</p> <p>15 my area of expertise. That's more of a legal question,</p> <p>16 in my view, and I have no response.</p> <p>17 BY MR. BLUESTONE:</p> <p>18 Q. Well, you're going to be doing testing of</p> <p>19 our devices at some point; correct?</p> <p>20 A. Hopefully.</p> <p>21 Q. And you're going to be using a Sophos</p> <p>22 tester; correct?</p> <p>23 A. Presumably.</p> <p>24 Q. And a Sophos tester is to test power over</p> <p>25 Ethernet functionality; correct?</p>	<p style="text-align: right;">Page 240</p> <p>1 the circumstance that we're now looking at, Claim 72 of</p> <p>2 the '107 patent, which now says that at least one of</p> <p>3 the different magnitudes is part of a detection</p> <p>4 protocol. Would power over Ethernet's protocols</p> <p>5 encompass a detection protocol?</p> <p>6 MR. COHEN: Objection, form --</p> <p>7 A. Yes, in my opinion.</p> <p>8 MR. COHEN: -- beyond the scope of the</p> <p>9 deposition.</p> <p>10 THE WITNESS: Oops. Sorry.</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. So it wouldn't encompass a detection</p> <p>13 protocol, notwithstanding the fact that the patent</p> <p>14 doesn't mention it in any way, shape or form?</p> <p>15 MR. COHEN: Objection, form, beyond the</p> <p>16 scope of the deposition.</p> <p>17 A. Well, the patent --</p> <p>18 THE WITNESS: I'm sorry.</p> <p>19 A. Yeah, I -- I have nothing more.</p> <p>20 BY MR. BLUESTONE:</p> <p>21 Q. And power over Ethernet wouldn't encompass</p> <p>22 a detection protocol, in your opinion, even though it's</p> <p>23 not standardized until after the alleged dates of</p> <p>24 invention; correct?</p> <p>25 A. Well, power --</p>
<p style="text-align: right;">Page 239</p> <p>1 A. Right.</p> <p>2 Q. And the patent doesn't mention power over</p> <p>3 Ethernet functionality; correct?</p> <p>4 MR. COHEN: Objection, form, beyond the</p> <p>5 scope of the deposition.</p> <p>6 A. That is correct.</p> <p>7 BY MR. BLUESTONE:</p> <p>8 Q. And power over Ethernet detection and</p> <p>9 classifications are detection protocols?</p> <p>10 A. They are, in my opinion.</p> <p>11 Q. Right. But they're not detection protocols</p> <p>12 that were implemented at the date of invention in these</p> <p>13 patents. At least they weren't standardized. Right?</p> <p>14 A. Right.</p> <p>15 Q. When did those power over Ethernet</p> <p>16 standards become a detection protocol that can be</p> <p>17 encompassed in Claim 72 of the '107 patent?</p> <p>18 MR. COHEN: Objection, form, beyond the</p> <p>19 scope of the deposition.</p> <p>20 A. Again, I have no insight to offer on that,</p> <p>21 and they couldn't possibly be unless it was found that</p> <p>22 the operation of those protocols infringed some of the</p> <p>23 other claims first. So --</p> <p>24 BY MR. BLUESTONE:</p> <p>25 Q. Sure. Understood. But I'm talking about</p>	<p style="text-align: right;">Page 241</p> <p>1 MR. COHEN: One second. Objection, form,</p> <p>2 beyond the scope of the deposition.</p> <p>3 A. Power over Ethernet does include a</p> <p>4 detection protocol. I don't think there's any question</p> <p>5 about that, so --</p> <p>6 BY MR. BLUESTONE:</p> <p>7 Q. Okay. It does include a detection</p> <p>8 protocol, but it's a detection protocol that isn't</p> <p>9 adopted until after the alleged dates of invention;</p> <p>10 correct?</p> <p>11 A. That is correct.</p> <p>12 Q. How would a person reading the patent</p> <p>13 specification know to avoid using power over Ethernet</p> <p>14 as a suitable detection protocol?</p> <p>15 MR. COHEN: Objection, form, beyond the</p> <p>16 scope of the deposition.</p> <p>17 A. Well, I -- again, I don't have much</p> <p>18 constructive to add here. I think ultimately, that's a</p> <p>19 matter for the courts to decide, and it seems like</p> <p>20 we're getting into infringement issues here, which I am</p> <p>21 not prepared to comment on, but --</p> <p>22 BY MR. BLUESTONE:</p> <p>23 Q. Fine. I'm trying to understand what the</p> <p>24 scope of detection protocol is. There is an argument</p> <p>25 that I can make that would say detection protocol is</p>

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<p style="text-align: right;">Page 242</p> <p>1 completely unbounded, it can be anything and everything 2 under the sun, and for that reason, this claim is 3 infinite. 4 MR. COHEN: Object. 5 MR. BLUESTONE: Sorry. Go ahead. 6 MR. COHEN: Object to the -- 7 MR. BLUESTONE: I have a feeling I can do 8 your objection for you, but that would be some sort of 9 acquiescence to it which I'm not prepared to do and I 10 don't think would be appropriate. 11 MR. COHEN: I'm waiting for the question. 12 MR. BLUESTONE: Yeah, let's start that 13 over. We're getting late in day anyway here. 14 BY MR. BLUESTONE: 15 Q. What I'm trying to probe with you here is 16 detection protocol and what the scope of that is to be 17 in the analysis. 18 A. Right. 19 Q. You are giving me an example where you're 20 saying, "Well, I wouldn't say someone designed 21 something for a purpose and then later on now is 22 infringing because a detection protocol came up later." 23 Well, this is what I'm arguing is exactly what's 24 happening here, because the patent application does 25 include power over Ethernet. No question yet.</p>	<p style="text-align: right;">Page 244</p> <p>1 BY MR. BLUESTONE: 2 Q. You might have a little conflict issue 3 there, but yeah, that's a funny joke. 4 A. I'm glad you recognized it. 5 Q. No. We both smiled. It's a long day, so I 6 totally understand that. That was acute. 7 But okay, let me start over, because this 8 is a legitimate question here. 9 How do -- how do you, as a person of 10 ordinary skill in the art, looking at Claim 72 of the 11 '107 patent, know that they're not part of a detection 12 protocol? 13 MR. COHEN: Objection, form, beyond the 14 scope of the deposition. 15 A. I agree with all that; but in addition -- 16 MR. BLUESTONE: Well, your objections are 17 working, Justin. 18 A. In addition, I mean, if you didn't already 19 infringe some other claims, this wouldn't even be an 20 issue. Right? So -- 21 Q. Yeah, but that's -- that's non-responsive. 22 That's -- that's not my question, at all. 23 My question is simply about Claim 72 and I 24 need to be able to decipher the bounds between what is 25 a detection protocol and what isn't.</p>
<p style="text-align: right;">Page 243</p> <p>1 Here's my question: 2 Aren't you saying that detection protocol 3 is encompassed -- encompasses protocols that are put 4 into effect after the date of invention? 5 MR. COHEN: Objection, form, beyond the 6 scope of the deposition. 7 A. Well, again, I don't really have anything 8 sensible to add there. It seems like we're getting 9 into infringement issues and it seems kind of unusual 10 to argue that you don't infringe because you did your 11 thing after the other one was invented. I mean, 12 typically, it goes the other way, but again, that's -- 13 that's sort of all I have on that subject. 14 BY MR. BLUESTONE: 15 Q. Can you give any guidance, to a person of 16 ordinary skill in the art who has reviewed the 17 specifications, as to how they would protect themselves 18 from the particular limitations of Claim 72 moving 19 forward into the future? 20 MR. COHEN: Objection, form, beyond the 21 scope of the deposition. 22 MR. BLUESTONE: Do you want me to rephrase 23 that? 24 A. Well, I do have a consulting business. No, 25 I'm just kidding.</p>	<p style="text-align: right;">Page 245</p> <p>1 A. So your question is, you want to build 2 something that infringes other claims, but you don't 3 want to get nailed on 72, or whatever? 4 Q. Why not. Go with that hypothetical. Why 5 not. 6 A. Well I -- I mean, that's not always pos -- 7 I mean, dependent claims can be tough to evade if 8 you've hit the independent claim, has been my 9 experience. That's all I can say. 10 Q. So you can't think of any way that you can 11 protect yourself from Claim 72? 12 MR. COHEN: Objection, form, beyond the 13 scope of the deposition. 14 A. Once again, I agree. And yes, I've already 15 told you, don't infringe on any of the others, for 16 starters. 17 BY MR. BLUESTONE: 18 Q. Okay. We're past that. And now 72. 19 MR. COHEN: Same objection. 20 BY MR. BLUESTONE: 21 Q. So let's go through 72. It says, "Where at 22 least one magnitude of the DC current is part of a 23 detection protocol." 24 A. Right. 25 Q. And in Claim 1, it says there could be</p>

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<p style="text-align: right;">Page 246</p> <p>1 multiple magnitudes of DC current.</p> <p>2 A. Right.</p> <p>3 Q. So correct me if I'm wrong, all you've got</p> <p>4 to do in 72 is have a device that meets the limitations</p> <p>5 of the claims and have just one value of DC current be</p> <p>6 part of a detection protocol and you infringe it.</p> <p>7 A. That's what it says, yes.</p> <p>8 Q. That's what it says.</p> <p>9 How is a magnitude of DC current part of a</p> <p>10 detection protocol and how do I know if that's</p> <p>11 happening or not?</p> <p>12 MR. COHEN: Objection, form, beyond the</p> <p>13 scope of the deposition.</p> <p>14 A. Yeah, I mean, I think I've already</p> <p>15 addressed that several times. I don't know what to add</p> <p>16 to it.</p> <p>17 BY MR. BLUESTONE:</p> <p>18 Q. Okay. 74, Paragraph 74 of Exhibit 1, you</p> <p>19 say, "In the context of the claims, detection protocol</p> <p>20 means the equipment is configured or designed so the</p> <p>21 magnitude of the current (flow) or the impedance in the</p> <p>22 path allow it to detect or determine some information</p> <p>23 about the equipment at the other end of the path."</p> <p>24 A. Okay.</p> <p>25 Q. Claim 72 just says a magnitude of current</p>	<p style="text-align: right;">Page 248</p> <p>1 BY MR. BLUESTONE:</p> <p>2 Q. So if the IEEE working group that was doing</p> <p>3 802.3 AF and 802.3 AT decides to discontinue the</p> <p>4 protocol, "We're no longer going to be part of the</p> <p>5 standard, do whatever you want," is it no longer a</p> <p>6 detection protocol under Claim 72?</p> <p>7 MR. COHEN: Objection, form, beyond the</p> <p>8 scope of the deposition.</p> <p>9 A. Again, I can't give you legal advice on</p> <p>10 what to do with your --</p> <p>11 BY MR. BLUESTONE:</p> <p>12 Q. I'm not asking for legal. I'm saying as to</p> <p>13 your understanding of detection protocol.</p> <p>14 A. Well, those --</p> <p>15 MR. COHEN: Same -- hang on one second.</p> <p>16 Same objections.</p> <p>17 A. Yeah, I just -- all I can say is, those</p> <p>18 detection protocols would not be wiped off the face of</p> <p>19 the earth. They are still published. They still</p> <p>20 exist. So if you follow them, they would still be</p> <p>21 detection protocols.</p> <p>22 BY MR. BLUESTONE:</p> <p>23 Q. Okay. My last line of questioning on this.</p> <p>24 A. Okay.</p> <p>25 Q. The IEEE is a group of engineers who get</p>
<p style="text-align: right;">Page 247</p> <p>1 is part of a detection protocol. Why is Paragraph 74</p> <p>2 talking about equipment being configured, et cetera,</p> <p>3 et cetera?</p> <p>4 A. Well, because it depends on other claims</p> <p>5 that require that.</p> <p>6 Q. So even though Claim 72 is only talking --</p> <p>7 well, DC current, we -- you stated, is not a structural</p> <p>8 limitation; right? There's no structure in DC current;</p> <p>9 correct?</p> <p>10 A. Right.</p> <p>11 Q. So Claim 72 is saying this component, which</p> <p>12 you say is not necessarily even present in the device,</p> <p>13 has a magnitude, and that magnitude is part of a</p> <p>14 detection protocol?</p> <p>15 MR. COHEN: Objection, form.</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. How am I at all supposed to go look at this</p> <p>18 claim and know, if the device doesn't even need to be</p> <p>19 actually doing this, whether it's ever going to be part</p> <p>20 of a detection protocol? I don't get it.</p> <p>21 MR. COHEN: Objection, form.</p> <p>22 A. I'm with you. I think we've been around</p> <p>23 this barn several times. I don't have -- if I haven't</p> <p>24 been able to explain it yet, I don't have anything else</p> <p>25 to add.</p>	<p style="text-align: right;">Page 249</p> <p>1 together and adopt standards; right? And in your</p> <p>2 opinion, the IEEE standards count as detection</p> <p>3 protocols.</p> <p>4 A. Well, they can, if they have a detection</p> <p>5 protocol in them.</p> <p>6 Q. Right. But that group of people is</p> <p>7 sufficient to provide a detection protocol?</p> <p>8 MR. COHEN: Objection, form.</p> <p>9 A. Yes.</p> <p>10 BY MR. BLUESTONE:</p> <p>11 Q. Is it sufficient for a detection protocol</p> <p>12 to be provided by just one person?</p> <p>13 MR. COHEN: Objection, form, beyond the</p> <p>14 scope of the deposition.</p> <p>15 A. I'm not sure what you're getting at.</p> <p>16 BY MR. BLUESTONE:</p> <p>17 Q. So the IEEE standard is a group of people</p> <p>18 getting together and they're adopting conventions,</p> <p>19 functional specifications; correct? I'm sorry. You</p> <p>20 have to say --</p> <p>21 A. I'm sorry. Yes. Yes.</p> <p>22 Q. And I'm asking you a situation where now</p> <p>23 it's not the IEEE, it's one guy sitting in a garage,</p> <p>24 for example, publishing his thoughts on the -- on --</p> <p>25 into the Ethernet -- or, sorry -- the Internet, "This</p>

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<p style="text-align: right;">Page 250</p> <p>1 is what I think a detection protocol should be." Is</p> <p>2 that enough for it to be a detection protocol?</p> <p>3 MR. COHEN: Objection, form, beyond the</p> <p>4 scope of the deposition.</p> <p>5 A. Well, once again, all I can say is that</p> <p>6 this is -- I only have opinions, I don't determine the</p> <p>7 outcome, and this is something that would be determined</p> <p>8 at trial by a judge and jury. And if it's some guy in</p> <p>9 his garage, I think you've got a pretty good chance of</p> <p>10 beating him. If it's an IEEE spec, not so much. That</p> <p>11 would be my guess. But again, I'm speculating.</p> <p>12 We're well beyond the scope of anything</p> <p>13 I've said.</p> <p>14 BY MR. BLUESTONE:</p> <p>15 Q. But -- and I'm sorry, I'm not trying to be</p> <p>16 difficult, but that's not answering my question.</p> <p>17 You are here testifying as to the meaning</p> <p>18 to a person of ordinary skill in the art. A person of</p> <p>19 ordinary skill in the art, how would they understand</p> <p>20 how many people have to get together for something to</p> <p>21 be a detection protocol?</p> <p>22 MR. COHEN: Objection, form, beyond the</p> <p>23 scope of the deposition.</p> <p>24 A. Again, I think that would be a</p> <p>25 case-by-case. I mean, if you're accused, you can</p>	<p style="text-align: right;">Page 252</p> <p>1 4:16 p.m.</p> <p>2 (Break from 4:16 p.m. until 4:21 p.m.)</p> <p>3 VIDEOGRAPHER: We are back on the record at</p> <p>4 4:22 p.m.</p> <p>5 BY MR. BLUESTONE:</p> <p>6 Q. Mr. Baxter, do you have any other opinions</p> <p>7 on claim construction other than those that are recited</p> <p>8 in your declaration Exhibit A or that you have stated</p> <p>9 today in this deposition?</p> <p>10 A. No, not at this time.</p> <p>11 MR. BLUESTONE: Okay. I have no further</p> <p>12 questions for the witness at this time.</p> <p>13 MR. COHEN: I think we will take a</p> <p>14 five-minute break and see what we -- if we have any</p> <p>15 questions.</p> <p>16 MR. BLUESTONE: Okay.</p> <p>17 VIDEOGRAPHER: We are off the record at</p> <p>18 4:22 p.m.</p> <p>19 (Break from 4:22 p.m. until 4:31 p.m.)</p> <p>20 VIDEOGRAPHER: We are back on the record at</p> <p>21 4:31 p.m.</p> <p>22 EXAMINATION</p> <p>23 BY MR. COHEN:</p> <p>24 Q. Mr. Baxter, I have just a few questions.</p> <p>25 In the course of preparing for your</p>
<p style="text-align: right;">Page 251</p> <p>1 defend yourself and ...</p> <p>2 BY MR. BLUESTONE:</p> <p>3 Q. So you can't answer that question?</p> <p>4 A. Give you a definitive answer that separates</p> <p>5 the world into detection protocols and non-detection</p> <p>6 protocols?</p> <p>7 Q. Sure. Yeah.</p> <p>8 A. No, other than what I've said here. If it</p> <p>9 uses the techniques taught in this patent to -- to do</p> <p>10 what I say in Claim 7 -- or Line -- Paragraph 74, then</p> <p>11 in my opinion, it would.</p> <p>12 Q. What if it's using techniques that are not</p> <p>13 taught in the patent, though?</p> <p>14 A. Well, then it wouldn't infringe, would it?</p> <p>15 Q. What if it's using techniques that are not</p> <p>16 part of the preferred embodiments, but are alleged to</p> <p>17 encompass the scope of the claims?</p> <p>18 MR. COHEN: Objection, form, beyond the</p> <p>19 scope of the deposition.</p> <p>20 A. Are you -- I mean, again, you're -- you</p> <p>21 know, I'm not a lawyer. I can't -- I can't advise you</p> <p>22 on those things. I --</p> <p>23 MR. BLUESTONE: All right. Let's take a</p> <p>24 break.</p> <p>25 VIDEOGRAPHER: We are off the record at</p>	<p style="text-align: right;">Page 253</p> <p>1 deposition, did you notice any errors or corrections in</p> <p>2 your declaration?</p> <p>3 A. Yeah, there was a couple.</p> <p>4 Q. And can you point them out for us?</p> <p>5 A. Yes. Paragraph 31 is an incorrect</p> <p>6 copy-and-paste or cut-and-paste. It should say</p> <p>7 "designed or configured to distinguish the piece of</p> <p>8 Ethernet equipment" blah, blah, blah, as above, on the</p> <p>9 previous page, not what it says here.</p> <p>10 Q. And any others?</p> <p>11 A. Yes. There was one point that's --</p> <p>12 Paragraph 101 said that one -- one claim, Claim 31,</p> <p>13 originally filed with the '012 patent, said 10BaseT.</p> <p>14 There were actually two. I guess two is a superset of</p> <p>15 one.</p> <p>16 Q. And do either of those corrections have any</p> <p>17 impact on your opinions?</p> <p>18 A. No.</p> <p>19 Q. And would those corrections affect any of</p> <p>20 your testimony today?</p> <p>21 A. No.</p> <p>22 Q. Now, we spent a lot of time talking about</p> <p>23 functional claim language versus structural claim</p> <p>24 language. Would you agree?</p> <p>25 A. Yes, I would.</p>

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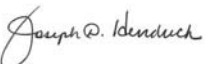
<p style="text-align: right;">Page 254</p> <p>1 Q. Is that how you normally talk in talking 2 about and discussing claim limitations? 3 A. No. I'm a technical guy. I look at the 4 technical aspects of them, but it's not something I 5 normally think about. 6 Q. Now, I'd like to turn your attention back 7 to Exhibit 6, specifically Page 3. This is Claim 1 of 8 the '107 patent; correct? 9 A. Yes. Yes. 10 Q. And I'd like to walk through each element, 11 and if you could give us a little description on what 12 part is structural, in your opinion, and which part is 13 functional. 14 So starting with the preamble, a piece of 15 Ethernet terminal equipment. 16 A. That's the preamble. That's apparatus. 17 Q. An apparatus claim. So that's structural? 18 A. Yes. 19 Q. And Ethernet connector? 20 A. Structural. 21 Q. First and second pairs of contacts? 22 A. Structural. 23 Q. Used to carry Ethernet communication 24 signals? 25 A. Functional.</p>	<p style="text-align: right;">Page 256</p> <p>1 magnitudes of DC current flow to result from at least 2 one condition applied to at least one of the contacts 3 of the first and second pairs of contacts"? 4 A. Functional. 5 Q. And the "wherein" clause following that? 6 A. Is also functional. 7 Q. And, in your opinion, do those functions 8 need to occur in order to meet the limitations in this 9 claim? 10 A. No. It's an apparatus claim as long as 11 they are configured to do it and it meets the elements. 12 Q. Now, we had a lengthy discussion about 13 powered off. Do you recall? 14 A. I do. 15 Q. And, in your opinion, powered off would 16 mean that the Ethernet terminal equipment without its 17 operating power; is that correct? 18 A. Yes. 19 Q. Now, I think some of the questions were 20 about whether or not power would be applied to these 21 claim -- structural claim limitations. Do you remember 22 that? 23 A. Yes, I do. 24 Q. Now, in the context of this claim, does 25 your construction of powered off still work, given your</p>
<p style="text-align: right;">Page 255</p> <p>1 Q. And that's "used to" as sort of the 2 preceding two words; correct? 3 A. Yes. 4 Q. At least one path? 5 A. Structural. 6 Q. For the purpose of drawing DC current. 7 A. Functional. 8 Q. And on that one, the preceding words 9 are "for the purpose of," correct? 10 A. Yes. 11 Q. And that's different than "used to" -- 12 A. Yes. 13 Q. -- but still signifying a functional 14 limitation? 15 A. Yes. 16 MR. BLUESTONE: Objection, leading. 17 BY MR. COHEN: 18 Q. The piece of terminal Ethernet equipment, 19 is that functional or structural, in your opinion? 20 A. Structural. 21 Q. Following that, the limitation "to draw 22 different magnitudes of DC current flow," is that 23 structural or functional? 24 A. It's functional. 25 Q. And following that: "The different</p>	<p style="text-align: right;">Page 257</p> <p>1 opinion on the structural functional limitations we 2 were just discussing? 3 A. Yes, I believe so. 4 Q. And can you explain that? 5 A. Yes. Well, because it does not have to be 6 powered up at all; it simply has to be configured to do 7 these things. Then this would meet it, whether powered 8 up, or not, whether it's all powered up, or not. 9 Q. Now, do you recall the Court's claim 10 construction from the prior case regarding Ethernet 11 data terminal equipment and terminal equipment? 12 A. Not specifically, no. 13 Q. If I told you that terminal equipment was 14 construed in the last case to be a device at which data 15 transmission can originate or terminate, does that 16 sound correct to you? 17 A. Yes. 18 Q. In the context of the '107 patent, it's a 19 piece of Ethernet terminal equipment; correct? 20 A. '107. Yes, it is. 21 Q. And the Court construed Ethernet data 22 terminal equipment in the last case as a device at 23 which data transmission can originate or terminate and 24 that is capable of Ethernet communication; is that 25 right?</p>

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<p style="text-align: right;">Page 258</p> <p>1 A. I believe so, yes.</p> <p>2 Q. Given the limitations in this claim, if you</p> <p>3 had these limitations alone, could this piece of</p> <p>4 Ethernet terminal equipment be a device at which data</p> <p>5 transmission can originate or terminate and that is</p> <p>6 capable of Ethernet communication?</p> <p>7 A. No, the communication here is not Ethernet</p> <p>8 in nature, so it would need that, in addition to the</p> <p>9 elements here.</p> <p>10 MR. COHEN: Thank you. I have no further</p> <p>11 questions.</p> <p>12 MR. BLUESTONE: I have a few questions.</p> <p>13 RE-EXAMINATION</p> <p>14 BY MR. BLUESTONE:</p> <p>15 Q. Mr. Baxter, while you were on break with</p> <p>16 your counsel, did you discuss the substance of your</p> <p>17 testimony you were giving right here?</p> <p>18 A. In general terms.</p> <p>19 Q. Okay. What did you discuss with counsel?</p> <p>20 A. Just, in general, the areas that we wanted</p> <p>21 to clean up a bit.</p> <p>22 Q. Did he discuss with you the portions of</p> <p>23 your declaration that needed to be corrected?</p> <p>24 A. No. I had -- I had actually flagged those</p> <p>25 earlier and we were kind of expecting you were going to</p>	<p style="text-align: right;">Page 260</p> <p>1 think it's improper for you to go and meet with a</p> <p>2 witness while he's under oath and try and elicit</p> <p>3 coached testimony.</p> <p>4 I have no further questions.</p> <p>5 VIDEOGRAPHER: Are we off the record?</p> <p>6 MR. COHEN: Yes. No further questions.</p> <p>7 VIDEOGRAPHER: We are off the record at</p> <p>8 4:40 p.m.</p> <p>9 -o0o-</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 259</p> <p>1 bring them up, but --</p> <p>2 Q. Okay. Did he discuss with you the aspects</p> <p>3 of your testimony, as to which aspects of the claims</p> <p>4 are functional and structural?</p> <p>5 A. We discussed that I kind of had a brain</p> <p>6 freeze there earlier and that we needed to clean that</p> <p>7 up, yes.</p> <p>8 Q. So he helped you provide some corrections</p> <p>9 to your testimony?</p> <p>10 MR. COHEN: Objection, form.</p> <p>11 A. We discussed in general terms.</p> <p>12 BY MR. BLUESTONE:</p> <p>13 Q. What about powered off? Did you discuss</p> <p>14 powered off with Mr. Cohen?</p> <p>15 A. In general terms.</p> <p>16 Q. Okay. And did he show you anything to help</p> <p>17 you with your testimony?</p> <p>18 A. Did he show me anything?</p> <p>19 Q. Is there anything that he pointed out to</p> <p>20 you, while you were talking, that he thought would help</p> <p>21 clarify your testimony?</p> <p>22 A. Well, he mentioned the previous Court --</p> <p>23 what do you call them? -- claim constructions, yes.</p> <p>24 MR. BLUESTONE: We object to all the lines</p> <p>25 of questioning, Justin, that you asked, because we</p>	<p style="text-align: right;">Page 261</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE EASTERN DISTRICT OF TEXAS</p> <p>3 TYLER DIVISION</p> <p>4 CHRIMAR SYSTEMS, INC., et § CIVIL ACTION NO.</p> <p>al., § 6:15-CV-163-JDL</p> <p>§</p> <p>Plaintiffs, § LEAD CASE</p> <p>§</p> <p>v. §</p> <p>§</p> <p>6 ALCATEL-LUCENT S.A., et §</p> <p>7 al., §</p> <p>§</p> <p>8 Defendants. §</p> <p>9</p> <p>10 REPORTER'S CERTIFICATION</p> <p>DEPOSITION OF LES BAXTER</p> <p>January 20, 2016</p> <p>11</p> <p>12 I, Joseph D. Hendrick, Certified Shorthand</p> <p>13 Reporter in the State of Texas, do hereby certify to</p> <p>14 the following:</p> <p>15 That the witness, LES BAXTER, was duly</p> <p>16 sworn by the officer and that the transcript of the</p> <p>17 oral deposition is a true record of the testimony given</p> <p>18 by the witness;</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 That the amount of time used by each party</p> <p>24 at the deposition is as follows:</p> <p>25</p>

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<p style="text-align: right;">Page 262</p> <p>1 David H. Bluestone 05 hr 28 min; Justin S. Cohen - 2 All other counsel - 00 hr 00 min; 3 That pursuant to information given to the 4 deposition officer at the time said testimony was 5 taken, the following includes counsel for all parties 6 of record: 7 FOR THE PLAINTIFF: Justin S. Cohen, Esq. 8 Shivan V. Mehta, Esq. THOMPSON & KNIGHT 9 One Arts Plaza 1722 Routh Street, Suite 1500 10 Dallas, Texas 75201 (214) 969-1211 11 Justin.Cohen@tklaw.com Shivan.Mehta@tklaw.com 12 13 FOR DEFENDANT AMX: David H. Bluestone, Esq. McDERMOTT WILL & EMERY 14 227 West Monroe Street Chicago, Illinois 60606-5096 15 (312) 984-5484 dbluestone@mwe.com 16 17 FOR DEFENDANTS ALE USA, INC., ALCATEL-LUCENT, USA, INC. AND ALCATEL-LUCENT HOLDINGS, INC.: Leisa T. Peschel, Ph.D., Esq. 18 Chris Cravey, Esq. WILLIAMS MORGAN, P.C. 19 710 N. Post Oak Rd., Suite 350, Houston, Texas 77024 20 (713) 934-4096 LPeschel@wmalaw.com 21 Cravey@wmalaw.com 22 I further certify that I am neither counsel 23 for, related to, nor employed by any of the parties in 24 the action in which this proceeding was taken, and 25 further that I am not financially or otherwise</p>	<p style="text-align: right;">Page 264</p> <p>1 Veritext Legal Solutions 1 North Franklin Street - Suite 3000 2 Chicago, Illinois 60606 Phone: 312-442-9087 3 4 February 3, 2016 5 To: Justin S. Cohen 6 Case Name: Chrimar Systems, Inc., et al. v. Alcatel-Lucent S.A. 7 Veritext Reference Number: 2219638 8 Witness: Les Baxter Deposition Date: 1/20/2016 9 10 Dear Sir/Madam: 11 Enclosed please find a deposition transcript. Please have the witness 12 review the transcript and note any changes or corrections on the 13 included errata sheet, indicating the page, line number, change, and 14 the reason for the change. Have the witness' signature at the bottom 15 of the sheet notarized and forward errata sheet back to us at the 16 address shown above, or email to production-midwest@veritext.com. 17 18 If the errata is not returned within thirty days of your receipt of 19 this letter, the reading and signing will be deemed waived. 20 21 22 23 Sincerely, 24 25 Production Department</p>
<p style="text-align: right;">Page 263</p> <p>1 interested in the outcome of the action. 2 Further certification requirements will be 3 certified to after they have occurred. 4 Certified this date: February 3, 2016. 5 6 7 8 9 10  Joseph D. Hendrick, CSR #947 Expiration Date: 12/31/16 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 265</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS 2 3 ASSIGNMENT NO: 2219638 CASE NAME: Chrimar Systems, Inc., et al. v. Alcatel-Lucent DATE OF DEPOSITION: 1/20/2016 4 WITNESS' NAME: Les Baxter 5 In accordance with the Rules of Civil Procedure, I have read the entire transcript of 6 my testimony or it has been read to me. 7 I have made no changes to the testimony as transcribed by the court reporter. 8 9 _____ Date Les Baxter 10 Sworn to and subscribed before me, a Notary Public in and for the State and County, 11 the referenced witness did personally appear and acknowledge that: 12 13 They have read the transcript; They signed the foregoing Sworn Statement; and 14 Their execution of this Statement is of their free act and deed. 15 16 I have affixed my name and official seal this _____ day of _____, 20____. 17 18 _____ Notary Public 19 _____ Commission Expiration Date 20 21 22 23 24 25</p>

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<p style="text-align: right;">Page 266</p> <p>1 DEPOSITION REVIEW CERTIFICATION OF WITNESS</p> <p>2</p> <p>3 ASSIGNMENT NO: 2219638 3 CASE NAME: Chrimar Systems, Inc., et al. v. Alcatel-Lucent 4 DATE OF DEPOSITION: 1/20/2016 4 WITNESS' NAME: Les Baxter</p> <p>5 In accordance with the Rules of Civil 6 Procedure, I have read the entire transcript of 7 my testimony or it has been read to me. 8 I have listed my changes on the attached 9 Errata Sheet, listing page and line numbers as 10 well as the reason(s) for the change(s). 11 I request that these changes be entered 12 as part of the record of my testimony.</p> <p>13 I have executed the Errata Sheet, as well 14 as this Certificate, and request and authorize 15 that both be appended to the transcript of my 16 testimony and be incorporated therein.</p> <p>17 _____ 18 Date Les Baxter</p> <p>19 Sworn to and subscribed before me, a 20 Notary Public in and for the State and County, 21 the referenced witness did personally appear 22 and acknowledge that: 23 They have read the transcript; 24 They have listed all of their corrections 25 in the appended Errata Sheet; 26 They signed the foregoing Sworn 27 Statement; and 28 Their execution of this Statement is of 29 their free act and deed. 30 I have affixed my name and official seal 31 this _____ day of _____, 20____.</p> <p>32 _____ 33 Notary Public</p> <p>34 _____ 35 Commission Expiration Date</p>	
<p style="text-align: right;">Page 267</p> <p>1 ERRATA SHEET VERITEXT LEGAL SOLUTIONS MIDWEST</p> <p>2 ASSIGNMENT NO: 2219638</p> <p>3 PAGE/LINE(S) / CHANGE /REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 Date Les Baxter</p> <p>22 SUBSCRIBED AND SWORN TO BEFORE ME THIS _____</p> <p>23 DAY OF _____, 20____.</p> <p>24 _____</p> <p>25 Notary Public</p> <p>26 _____</p> <p>27 Commission Expiration Date</p>	

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